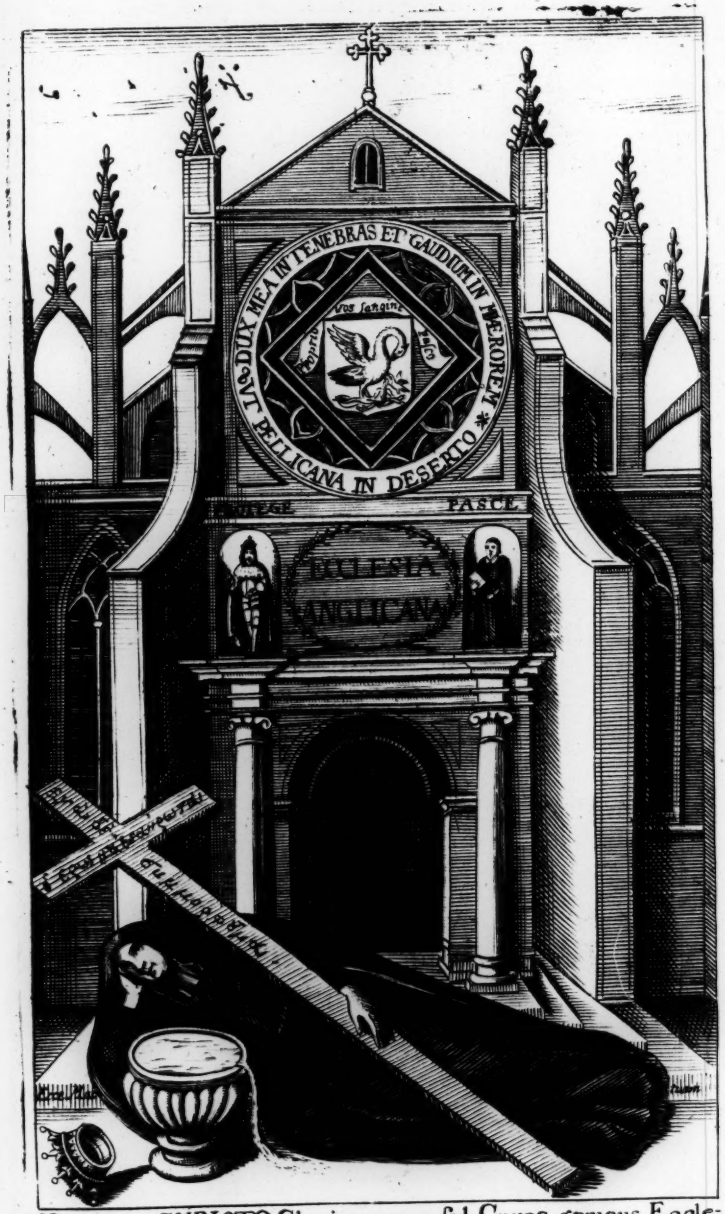
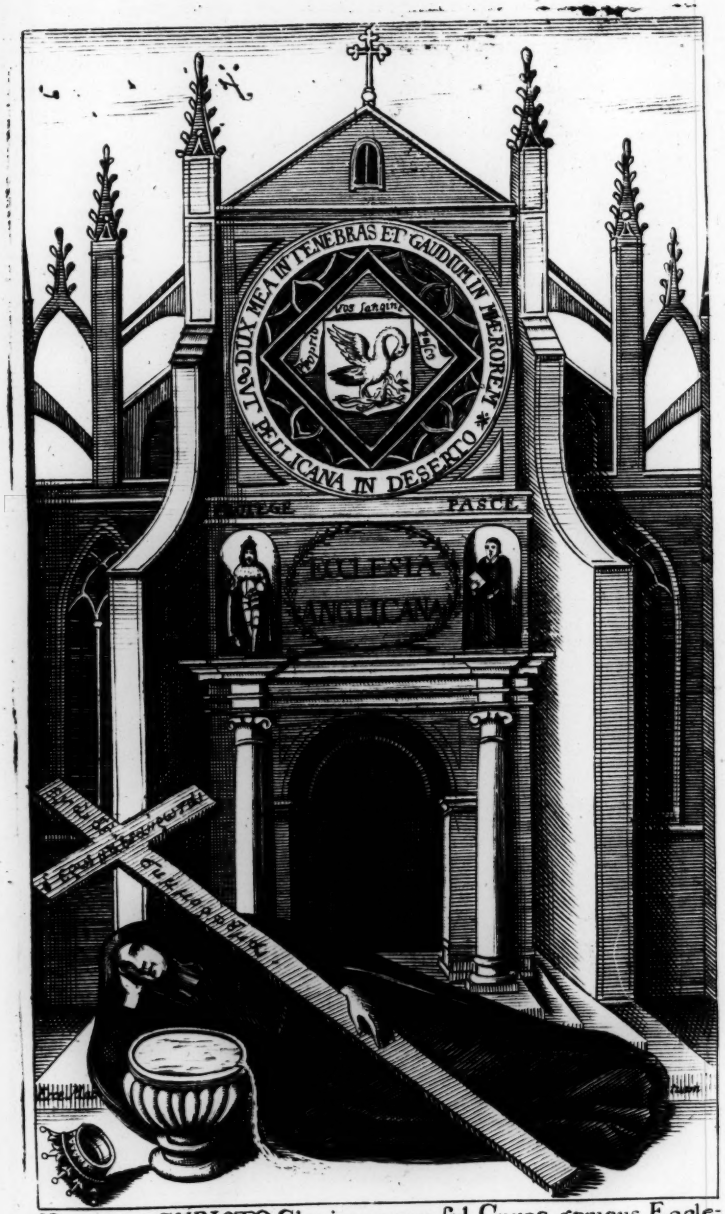


Nunquam CHRISTO Charior quam sub Cruce gemens Eccle-
sia



Nunquam CHRISTO Charior quam sub Cruce gemens Eccle-
sia

~~XVIII. 12. 41~~

LEGES ANGLIÆ. 1. 37. 57

THE ~~Ff-8-73~~

LAWFULNESS

OF

Eccleſiaſtical Juriſdiction

IN THE

CHURCH of ENGLAND,

Aſſerted and Vindicated

In ANSWER to

Mr *HICKERINGILL's*

Late Pamphlet Stiled

***NAKED TRUTH*, the 2d Part.**

Gen. II. ult.

Naked ----- but not aſhamed.

By *Fran. Fullwood*, D. D. Archdeacon of *Totnes* in *Devon.*

LONDON,

Printed for *R. Royſton*, Bookſeller to the King's moſt Excellent Majeſty, and are to be ſold by *George May*, Bookſeller in *Exon.* 1681.

Academiæ Cantabrigiensis
Liber

TO THE READER

I MUST beg my *Readers* pardon, that I have not chaſtiſed ſo ſpiteful an *Adverſary*, according to his merits and *provocations*; for I verily want his *Talent*, and diſlike the *Sport*.

I confeſs that when a *Divine* of the Church of *England*, who hath alſo a ſhare in her *Government*, when ſuch a one ſhall be taken throwing *dirt* in the *face* of his *Mother*, *Fathers*, *Brethren*, and his own *Profeſſion*, he cannot but expect to be laſht to purpoſe, and to be told roundly, that none but accurſed *Children* and very *fools* would ſpeak ſuch *Naked Truth*.

Some *Cenſors*, that obſerve his endeavours, to make not only the *Canons* of the *Church*, but the very Canon of *Scripture* it ſelf to vail to the *Law* of the Land, would charge him with the *profaneneſs* of *Hobbs*: yea, others that find him playing tricks, and ſporting (according to his little wit) with the very *names* of *Canon*, *Clergie*, *Church* and *Church-men*; and *ſcoffing* at almoſt all that's *Sacred*, will take

him to be at *Hugh Peters*'s game, and running his wretched race.

But while he damns the *Presbyterians*, *Independents*, and the *Fifth-Monarchy*, together with the *Church* of *England*, he tempts the *Wits* to produce thirty one reaſons to prove he is ſomething, *viz.* a *Papiſt*; notwithſtanding his drollery and railery about *Foppery* and *Popery*.

Laſtly, For *Pride*, *Envy*, *Wrath*, *Malice*, *Spite* and *Revenge*, ſome ſay he is a very *Angel of Light*, and in ſomewhat more excellent; for the *Scriptures* witneſs that the *Devil* himſelf ſpake many words both of *truth* and *ſoberneſs*; and that he ſeldom or never ſpeaks like an *Atheiſt*.

For my part, I ſay nothing of him further than this, That if others can find Truth in the man, I cannot; And though I am ſure he lies open and *naked* enough, yet I had never troubled my ſelf to *expoſe* him, had it not been to ſecure the *Government*, and to preſerve the *Simple* from being betray'd to the danger of the *Laws* by the inſolent *Rant* of a pitiful *Sophiſter*.

THE

THE PROEME.

The Contents of it.

1. Power *purely* Spiritual of *Divine Right.* 2. *Emperors* confirm'd *Biſhops*-Canons. 3. The force of our Canons not from *Rome.* 4. *Officers* of our Courts. 5. *Magna Charta.* 6. The Authors *Conceſſions.*

1. *Diſcourſing in the following* Treatiſe *of the* Forenſic *Juriſdiction of this Church, as* Eſtabliſh'd *by the* Law *of the Land, we had no* direct *or neceſſary occaſion to ſpeak of the Churches* Power, *as* purely Spiritual, *touching* Preaching, *the* Sacraments *and* Cenſures.

For this is certainly of Divine Right; *and was given to the Church by Chriſt himſelf, with the* Keys *of the Kingdom of Heaven; and was*

accordingly exerciſed in the Apoſtles *times, and ſeveral* hundred *years after, without the allowance of the* Civil Magiſtrate; *and was alſo* ſuppoſed, *allowed, and admitted as ſuch in our own* Kingdom; *and by all the* world, *even* with *their receiving* Chriſtianity, *without* queſtion *or Alteration, as is evident in all our* Hiſtories: *and indeed our own* Laws *exclude this purely* Spiritual *Power of the Keys from the* Supremacy *of our* Kings, *except it be to ſee that Spiritual men do their* duty *therein.*

2. *Neither doth it concern me to enquire what Power the Church had, and exerciſed after the* Empire *became Chriſtian: only it ſeems very clear, that* Conſtantine, *and the other eminent Chriſtian* Emperors *never made any* Eccleſiaſtical *Laws without the Counſel of* Biſhops; *but only in Confirmation, or for the Execution of Eccleſiaſtical* Canons: *Yet it cannot be denied, but they* called Councils; *they approved their* Canons; *and afterwards enter'd them into the* body *of their* Laws; *and ſtill ratified the Sentences of* Eccleſiaſtical *Judges with* Civil *penalties.*

3. *Nor yet is't my preſent* Province *to recollect what* Influence Imperial *Chriſtian* Rome *had upon the Tender Age, and immature State of the* new born Church *of* England: *though we do not deny, but it might be conſiderable, both as to the* Form *and Order of our External* Juriſdicti-

on

on *in our inferiour* Miniſters *and ancient* Canons.

But how great ſoever it was, it was at firſt only by way of Example *and* Direction: *and when afterwards it was by* Command, *it was ſuch Command, as according to the Rights and* Conſtitution *of this Church, had no* Legal *obligation upon us, but by our own* conſent; *and as it became part of our own* Eſtabliſhment, *either by* Cuſtom *or expreſs* Law; *upon ſuch an occaſion the ancient* State *of* England *cry out,* Nolumus mutare Leges Angliæ. *This Realm hath been and is free from* Subjection *to any mans* Laws, *but only to ſuch as have been* deviſed — *within this Realm, or to ſuch other as by* ſufferance *of your Grace and your* Progenitors, *the people of this* Realm *have taken at their free* liberty, *by their own* conſent *to be uſed amongſt them; and have bound themſelves by* long uſe *and Cuſtom to the obſervance thereof; not as to the obſervance of the* Laws *of any* foreign *Prince,* 25 Hen. 8. 21.

For (as Coke *declares in* Cawdries *Caſe) as the* Romans *fetching diverſe Laws from* Athens, *yet being approved and allowed by the* State *there, called them* Jus Civile Romanorum; *and as the* Normans *borrowing all or moſt of their* Laws *from* England, *yet baptized them by the name of the Laws or Cuſtoms of* Normandy; *ſo albeit, the* Kings *of* England *derived their*

their Eccleſiaſtical Laws *from others, yet ſo many as be proved,* approved *and allowed here, by and with a general* conſent, *are aptly and rightly called, The* Kings Eccleſiaſtical Laws of *England.*

4. *As for the* Inferior *Miniſters in the Eccleſiaſtical Courts, that ſeem to be ſo* offenſive *to weak people, that they are not* Popiſh, *or ſo ſlanderouſly to be reported, there is this plain* demonſtration, *that theſe* Courts *are the* Kings *Courts, and the* Laws *thereof are the* Kings *Laws; and that notwithſtanding all the ſevere* Statutes, *eſpecially ſince the* Reformation, *againſt all* foreign *Juriſdiction, and all ſuch as act under, or by vertue of any* foreign *Power within this* Realm; *yet* ſuch Miniſters *are both permitted and* required *to* execute *their places in the ſaid* Courts *by the* Laws *and* Statutes *of the Kingdom.*

But grave Mr. Hickeringill *ſaith, there is not the leaſt* Specimen *of* Chancellors, Regiſters, Sumners, Officials, Commiſſaries, Advocates, Notaries, Surrogates, *&c. or any* ejuſdem farinæ *in* holy Writ: *and hence 'tis learnedly inferred by ſome, that we have made ſo many* new Officers *in the* Church *of Chriſt.*

But how witleſs and Quaker-like *is this? and how unlike Mr.* Hickeringill? *I ſhould ſuſpect he would call for* Scripture, *for an* hour-Glaſs, *and for* Clerks *and* Sextons, *were it not that he is ſo palpably in the ſervice of a vile* Hypotheſis,

that

that will ſtand upon no better grounds; for he knows, that theſe are not ſo many new *Officers of the Church, but only* Aſſiſtants *allow'd by* Law *under* Biſhops, *and ſuch other Spiritual men as have* proper *power of Eccleſiaſtical* Juriſdiction: *he knows there is no other* Canon, *but the* Law *of the Land; and that the* Civil Magiſtrate *hath power to tell us* what is Scripture: *and that he hath told us S.* Paul's Epiſtles *are ſo, where we read of* helps *in* Government; *and that* Chancellors, Commiſſaries, Officials *and* Surrogates *are but ſuch* helps *under* different *names, from the ſeveral ways and* degrees *of their* Delegation: *That* Regiſters *are but to make and keep the* Acts *of Court,* &c. Advocates *and* Proctors *to order and manage* Cauſes; *and* Apparators *to ſerve* Proceſſe, *and execute* Mandates: *and that none but one in* Orders *meddles with the Keys, either for* Excommunication *or* Abſolution; *Mr.* Hickeringill *is a man of great experience in Spiritual Juriſdiction, and need not be told of theſe plain matters.* 1 Cor. 12. 28.

5. *And ſeeing the* Statiſt *will not be quieted, but by Argument taken from* Law; *I have written the following* Treatiſe, *wherein I hope I have ſufficiently demonſtrated, that our* Eccleſiaſtical Courts *are Eſtabliſh'd in the* Laws *and* Statutes *of this* Kingdom. *Our* Magna Charta *it ſelf, or the great* Charter *of the Engliſh Liber-*

ties

ties doth ſuppoſe and acknowledge the Legal *exerciſe of Eccleſiaſtical Juriſdiction by the forementioned Miniſters, as one of the* Ancient *Rights and Liberties of this Church; and doth alſo ratifie, confirm and eſtabliſh it* for ever; *at leaſt in the Judgment of my* Lord Coke, *in theſe words.*

This Charter *is* Declaratory *of the Ancient* Law *and Liberty of* England. ----- [Et habeat omnia Jura ſua integra] *that is, that all* Eccleſiaſtical *perſons ſhall enjoy all their lawful* Juriſdictions, *and other their* Rights, *wholy without any* Diminution *or Subſtraction whatſoever: and* [Jura ſua] *ſhew plainly, that no* new *right was given unto them, but ſuch as they had before, hereby are* Confirmed.

Libertates ſuas illæſas] Libertates *are here taken in two Sentes;* 1. *For the* Laws *of* England. 2. *For* Priviledges *held by* Parliament, *Charter or Preſcription more than* Ordinary. Coke Magna Charta. *By all which Titles the* Church *of* England (Eccleſia non Moritur, *but* Moriuntur Eccleſiaſtici) *holds her Ancient Liberty of keeping* Courts *to this day.*

6. *Yet I do not ſay but the* manner *of proceedings in theſe Courts may be juſtly and reaſonably* altered, *as his gracious* Majeſty *may be adviſed; and yet the* true *Liberty of the* Church *be rather fortified than Violated.*

Therefore, after ſome Overtures made lately, by a far greater Perſon, in a larger *Sphere, my*

Narrower

Narrower ſubject may ſuffer me humbly to offer my thoughts touching ſome Alterations, that perhaps might not prejudice our Eccleſiaſtical Miniſters, *or their* Courts; *with all due ſubmiſſion to my* Superiors.

Theſe things following have been long in my thoughts.

1. *That a* ſpeedier *way might be appointed for the diſpatch of Cauſes in the Spiritual Courts than the preſent* Legal *Rules thereof will allow.*

2. *That* trivial *matters (ſuch as ſmall* Tithes *and Church-*Rates*) might be ſummarily ended, without expoſing the ſolemn Sentence of* Excommunication, *as is generally complain'd. Eſpecially conſidering that the* Statute *touching the Writ* de Excom. capi. (*as well as* Vulgar *apprehenſion*) *makes a difference in* Original *Cauſes; though indeed the* immediate *cauſe of all* Excommunication *is always the* contempt *of the* King's *Eccleſiaſtical Juriſdiction, in not* obeying, *either its* Summons *or* Sentence; *both theſe perhaps may be contrived by wiſe men, without prejudice to the ſaid* Juriſdiction.

3. *That there is reaſon to* reaſcertain *the* Fees *for* Probates *of* Wills, *and granting Let-*

ters

ters of Adminiſtration, *with ſome moderate reſpect had to the* difference *of the value of* Mony, *when the former* Act *was made, and at this time, ſo as the Officers in the* Kings *Spiritual Courts may live upon their Employment.*

4. *And why* Excommunication decreed *in Court may not be ſent to the* Parochial *Miniſter, to be, not only* declared, *but* Executed *by him, as the* Biſhops *Surrogate; and* convenient *time allowed him to endeavour to reconcile the offender, and to prevent the* Sentence, *if it may be, I ſee not, if that may give any ſatisfaction.*

Such kind of Alterations *perhaps may be admitted without real* prejudice *to the Church, or rather with* advantage, *as well as thoſe made by the* Conqueror, *when he* divided *the Eccleſiaſtical from the Civil* Courts: *The* Law *by which he made that Diviſion is famous, the clauſes of it concerning* this *matter may be deſired by the* Reader, *therefore I ſhall take the pains to tranſcribe them; they are theſe:*

"Willielmus Gratia Dei, Rex Anglorum, &c.
"William by the Grace of God, King of Eng-
"land --- to all --- that have Land in the Bi-
"ſhoprick of Lincoln; know ye all, and all others
"my faithful People in England, that the Epiſco-
"pal Laws, that have [Non bene] not well been
"exerciſed, nor according to the Precepts of
"holy

"holy Canons, even to my time in this King-
"dom (Concilio Communi) with Common
"Counsel, and with the Counsel of the Biſhops
"and Abbots, and all the chief men of my King-
"dom, I judge (fit) to be amended. Moreover,
"I Command, and by my Kingly Authority in-
"joyn, That no Biſhop or Archdeacon de Legibus
"Epiſcopalibus, hold (Placita) Pleas any long-
"er in Hundret, nor bring any Eccleſiaſtical Cauſe
"to the Judgment of Secular men; but whoſoever
"ſhall be called or queſtioned for any Cauſe ac-
"cording to the Eccleſiaſtical Laws, he ſhall come
"to the place which the Biſhop ſhall chuſe, and
"there ſhall anſwer for his Cauſe; and not ſecun-
"dum Hundret; and he ſhall do right to God and
"the Biſhop; not according to the Hundred, but ac-
"cording to the Canons and Epiſcopal Laws.

"----- But if any through pride will not appear
"[Venire ad Juſticiam Epiſcopalem] let him be
"called the firſt, ſecond and third time, and if yet
"he will not come, let him be Excommunicated,
"and if need be, let the Strength and Juſtice of the
"King or Sheriff, ad hoc Vindicandum adhibea-
"tur ---- This alſo I defend, and by my Authori-
"ty interdict, that no Sheriff or other Miniſter of
"the King, or any Lay-man do intermeddle with the
"Laws which belong to the Biſhop.

Give me leave to ſubjoyn a few Notes *upon this* Law *of the* Conqueror *and I have done.*

1. *The* ſubſtance *and* matters *of* Eccleſiaſtical *Power and Connuſance, was the* ſame *long* before

before *this* Law *was made, and not* Altered *by it: 'twas a* Law *of King* Alured. Si quis Dei rectitudines aliquas deforciat, reddat lathlite cum Dacis, witam cum Anglis: *And the ſame is afterwards confirmed and renewed by* Canutus *and other* Kings: *whereby it appeareth, that long before the* Conqueſt *the* Authority *and Juriſdiction of the Church was maintained by the* ſetled Laws *of the Kingdom; and that Eccleſiaſtical* Judges *had power ſo anciently to* Excommunicate; *and had the* help *of the* King *and the Sheriff to proceed againſt the obſtinate.*

2. *'Tis yet very remarkable, that for the* form *and manner of their Spiritual Courts and proceedings before the* Conqueſt, *it was not* here *in* England *as it was at* Rome; *and therefore our moſt* Ancient *Church-Government was not* derived *or Received from* Rome: *This* Law *obſerves, that before the* Conqueror, *the Precepts of holy* Canons, *as to* diſtinct *Juriſdictions, were not obſerved in* England; *that is, the* Canons *of the* Imperial *Church, for ſix or* ſeven *Hundred years before the Juriſdiction of* that *Church was* divided *from the Civil, even by the* Emperor Conſtantine *himſelf; but for ſo many hundred years before the* Conqueſt, *our Juriſdictions were exerciſed together in* Hundret, *as the* Law *acknowledgeth, and is* confeſſed.

3. *We*

3. *We here ſee a plain Eſtabliſhment of our* Spiritual Courts, *with power of* Excommunication, *for* non-appearance, *in the* letter *of this Ancient* Law, *under the* Kings defence, *and enforced with the* Secular Arm; *and 'tis obſervable, that the* diſtinction *of the Eccleſiaſtical from the Civil* Courts, *was made in the* Kings *own* Name, *and not the* Pope's, *by the* Kings power *and none* other; *with the* Counſel *of his own* Subjects *only, and not of* Rome *that we read of; and only with* reſpect, *and not in any* obedience *to the* ancient Canons *or* foreign *methods: And thus the Juriſdiction in our Courts Eccleſiaſtical as* diſtinct *from the Civil, is as far from being* Popiſh *in their* Original, *as it was when they were conjoyned; and therein ſo unlike to the* diſtinct *proceedings of the* Spiritual *power beyond the Seas ſo many hundred years before: And thus our* Spiritual Courts, *both* before they *were divided, and* when *they came to be divided from our* Civil *Courts, ſtand firm in the* Ancient Laws *of this Land.*

4. *There are certain great* Epoche's *of the* Legal *Eſtabliſhment of the Churches power, which I ſhall but touch;* 1. *It was received with* Chriſtianity, *and grew and flouriſhed by our Ancient* Laws *before the* Conqueſt. 2. *In the beginning of our* Norman *Conſtitution, it was thus* diſtinguiſhed *and eſtabliſh'd by the* Conqueror. *So it was in* Magna Charta, *the firſt Statute.*

3. *Upon the* Reformation *in* Hen. 8. *it was* re-eſtabliſh'd. 4. *So it was upon the* Return *of Reformation after* Queen Mary *by* Queen Eliz. *And* 5. *ſo likewiſe upon the* Return *of our preſent gracious* Soveraign *King* Charles II.

5. *Further, I hence obſerve, that ſome* Alterations *in Eccleſiaſtical proceedings may be made by* Law, *without any prejudice to the* Churches *power: 'Tis obſerved out of* Spelman *before, that by* this *Law the* Conqueror *did not* leſſen *the Churches power: indeed ſome* Inconveniences *are uſually conſequent to publick* changes; *and* 'tis *thought by our* Civilians, *that the many* prohibitions *which interrupt our Eccleſiaſtical* Courts *are occaſioned by their being* divided *from the* Temporal: *but may not that inconvenience be* accidental *to that* Diviſion? *Or if at any time there be* juſt cauſe *for the Church to complain in that reſpect, is it not rather of the* Judges *than the* Laws *or the* Conſtitution?

But to the matter *before us; admit, for* Inſtance, *that after* Summary hearing *and Sentence of the* Judge, *in Caſes of* ſmall Tithes, Church *rates, and ſuch trivial matters, a* Juſtice *of the Peace, or ſome other perſon being legally* certified, *were* impowered *and* obliged *to grant* Warrants *of* Diſtreſs: *It ſeems to me a* greater inconvenience *in expoſing Excommunication in ſuch light Cauſes would be hereby* remo-

ved,

ved, than any contracted by ſuch an Alteration; *and methinks no one ſhould diſdain the* new Office, *ſeeing the* Superior Judge *hath been ever bound to iſſue out the* Writ de Excom. Cap. *and the* Sheriff *to impriſon the* party, *upon a Certificate from the* Biſhop.

But I muſt humbly leave ſuch things to wiſer Judges.

THE CONTENTS OF THE CHAPTERS and SECTIONS.

CHAP. I.

THE general Propoſition.

The Eccleſiaſtical Juriſdiction, *as now Exerciſed in the Church of* England, *is Allow'd and Eſtabliſh'd by the Laws of the Land.*

Sect. 1. *An Account of the Method.* Page 1.

Sect. 2. *Mr.* Hickeringill's *Reaſoning Noted and Reſolv'd.* p. 2.

Sect. 3. *The* Propoſitions *ſuggeſted by M.* Hickeringill *are theſe following.* p. 4.

CHAP. II.

Our Eccleſiaſtical Juriſdiction *in* England *was not derived from the* Pope, *but from the* Crown *before the Reformation by* Henry *the Eighth.* p. 5.

Proof againſt this Popiſh *principle.*

Sect. 1. *From the root and branches of Eccleſiaſtical* Power, Donation, Inveſtiture, Laws. p. 6.

Sect. 2. *Juriſdiction.* p. 7.

Sect. 3, 4, 5. p. 9, 11, 12.

CHAP. III.

King Hen. 8. *did not by renouncing the* Power *pretended by the* Pope, *make void the* Eccleſiaſtical *Juriſdiction: neither was it* void *before it was* reſtored *by* Edw. 6. 2. p. 13.

Sect. 2, 3. p. 16, 20.

CHAP.

THE CONTENTS.

CHAP. IV.

Eccleſiaſtical Juriſdiction *is lawfully exerciſed, without the* King's Name *or* Stile *in* Proceſſes, *&c. notwithſtanding the* 1 Edw. 6. 2. p.22.

Sect. 1,2,3. p.23,24,26.
Sect. 4. 1 Edw. 6. 2. Repeal'd, *appears from* practice. p.28.
Sect. 5. 1 Edw. 6. 2. *Repealed in the Judgment of all the Judges, the King and Council.* p.31.
Sect. 6. *Mr.* H. Cary's *Reaſon to the contrary conſidered.* p.36.

CHAP. V.

The Act *of* 1 Eliz. 1. *Eſtabliſhing the* High-Commiſſion *Court, was not the* foundation *of* Ordinary *Eccleſiaſtical Juriſdiction in* England, *againſt Mr.* Hickeringill. p.41.

CHAP. VI.

How *our* Eccleſiaſtical *Juriſdiction in* England *came at* firſt, *and is at* preſent *Eſtabliſh'd by* Law. p.46.

Sect. 1. Juriſdiction *of the Church in* Common *Law.* p.51.
Sect. 2. *The Government* Eccleſiaſtical *is Eſtabliſh'd in the* Statutes *of this Realm.* p.54.

CHAP. VII.

Of Canons and Convocations. p.60.

The Concluſion. p.64.

The Poſtſcript. p.67.

CHAP.

The Bookseller to the Reader.

THE abſence of the Author, and his inconvenient diſtance from *London*, hath occaſioned ſome ſmall *Errata*'s to eſcape the Preſs. The Printer thinks it the beſt inſtance of pardon, if his Eſcapes be not laid upon the Author, and he hopes they are no greater than an ordinary underſtanding may amend, and a little charity may forgive.

R. Royſton.

CHAP. I.

The General Propoſition.

THE

Eccleſiaſtical Juriſdiction,

As now Exerciſed in the Church of England, *is Allow'd and Eſtabliſh'd by the Laws of the Land.*

SECT. I.

An Account of the Method.

AFTER ſo many hundred years *confirmation*, both by *Law* and *Practice*, 'tis a marvellous thing this ſhould be a *queſtion*: yet, of late two worthy Gentlemen, treading in the ſteps of ſome former Male-contents, have ventured to make it one. Mr. *Edmond Hickeringill*, and Mr. *H. Cary*: the firſt, in his Book called *Naked Truth*, the Second part: the other, in *his*, modeſtly ſtiled, The *Law of England*: And it is to be obſerved,

ſerved, they were both Printed very *ſeaſonably* for the ſetling our diſtractions through the fears and danger of *Popery*.

I ſhall note what they ſay, diſcover their groſs and dangerous *miſtakes*, anſwer and remove their pitiful *Objections*, and then endeavour to ſatisfie ordinary and honeſt enquirers both *that*, and *how* our *Eccleſiaſtical* Juriſdiction ſtands firm and unſhaken upon the *baſis* of our *Engliſh Laws*.

SECT. II.

Mr. Hickeringill's *Reaſoning Noted and Reſolv'd*.

Mr. *Hickeringill* is pleaſed to ſay, that upon the Stat. 1 *Eliz.* 1. was built the *High Commiſſion Court*, and the Authority of all *Canon-makers* Synodical; but down came the *Fabrick*, when that Act was *Repealed* by 17 *Car.* 1. 11. and 13 *Car.* 2. 12.

Where proviſion was made by ſtriking at the *foundation* 1 *Eliz.* 1. that no more *Commiſſions* of that nature be granted any more; only the *Spiritual* Courts by 13 *Car.* 2. 12. were to be in *Statu quo*, wherein they were 1639. What ſtate? no *great* I'le warrant you, if the *Baſis*, on which their *Star-Chamber* and *High-Commiſſion-Court* were built, be taken away.

All Eccleſiaſtical Juriſdictions till *Hen.* 8. were derived from the Pope, as *Supream* of the Church: this Head being beheaded, the Supre-

Supremacy was inveſted in the *Crown*.

But 1 *Edw.* 6. 2. Enacts, that all *Proceſs* Eccleſiaſtical ſhould be in the *Name*, and with the *ſtile* of the *King*, &c. So that if there be any Eccleſiaſtical Juriſdiction in *England* diſtinct from his Majeſties *Lay Courts*, all their *Proceſſes* muſt be in the Kings Name, *&c.*

'Tis true 1 *Edw.* 6. 2. is *repealed* by the 1 *Mar.* 2. but I care not for that, for 'tis *revived* by the *Act* of repeal 1 *Jac.* 25.

The Clergy in Convocation acknowledged in their Petition, that their Eccleſiaſtical power was at that time taken away.

So that their preſent Juriſdiction (being not from God; that's certain) 'tis not from Man, becauſe his Majeſty has promiſed 13 *Car.* 2. 12. *never* to empower them with any more Commiſſions to the worlds end.

But this I do not *peremptorily* aſſert.

I here proteſt, I know not by *what Authority* we do theſe things, conſidering the premiſes, and the repealing of 1 *Eliz.* 1.

By the Statute of *Hen.* 8. all theſe *Ordinary* Juriſdictions were cut off, and were *revived* by 1 *Edw.* 6. upon *Conditions* only.

This is the very *Naked Truth*, under his firſt Query, and in his Concluſion, and up and down this worthy Book; that is, ſuch a ſhabby lawleſs *Logick*; ſuch a rude and ſhatter'd way of *reaſoning*, as deſerves to be reduc'd with a *rod*, and laſht into method and ſence, and better *manners*.

Eſpecially if you ſingle out his falſe and ſturdy *begging Propoſitions*; fraught with

a wretched deſign of robbing his own *Mother*, in the Kings *high way*, with which he challenges paſſage to cheat and abuſe the Country.

My buſineſs is only to apprehend the *Vagabonds*, and commit them to the *juſtice* of ſome more *ſevere* and ſmarter hand.

SECT. III.

The Propoſitions *ſuggeſted by Mr.* Hickeringill *are theſe following.*

I. *That before* Hen. 8. *all Eccleſiaſtical Juriſdiction in* England *was derived from the* Pope: *as Mr.* Cary, p. 6.

II. *That* Hen. 8. *when he annex'd the Eccleſiaſtical Juriſdiction to the* Crown, *he took it wholly away from our Eccleſiaſtical* Miniſters.

III. *That the Church had* no *Juriſdiction after* Hen. 8. *had annex'd it to the Crown, till* 1 Edw. 6. 2.

IV. *That if there be any Eccleſiaſtical Power in our Church, it cannot be executed, but in the* Name *and with the* Stile, &c. *of the King, according to* 1 Edw. 6. 2.

V. *That all our Eccleſiaſtical Power was lately founded in* 1 Eliz. 1. *as it eſtabliſh'd the* High-Commiſſion-Court; *and*

and that Act *being Repeal'd, all Eccleſiaſtical Power was taken away with the Power of that* High Commiſſion.

On a *Rock* conſiſting of theſe *Sands*, ſtands our mighty Champion, triumphing with his *Naked Truth*; but we come now to ſift them.

CHAP. II.

Our Eccleſiaſtical Juriſdiction *in* England *was not derived from the* Pope, *but from the* Crown *before the Reformation by* Henry *the Eighth.*

DARE any *Proteſtant* ſtand to the contrary? had the *Pope really* Authority here before *Henry* the Eighth? did our *Biſhops* indeed receive all their power, exerciſed ſo many hundred years together, *originally* from the Pope? was not their *Political* Juriſdiction derived from and depending on the *Crown Imperial?* and founded in our own *Laws*, the Cuſtoms and *Statutes* of the Realm? are theſe the *Popes* Laws, and not the *Kings?* was there not Eccleſiaſtical power in *England*, both for *Legiſlation* and *Execution ab origine*, before the *Papal Uſurpation?* was not *Popery* at firſt, and all along, till *Hen.* 8. an *illegal* uſurpation upon our more Ancient Government, ne-

ver own'd much leſs *eſtabliſh'd* in the true & *Ancient Laws* of *England*, and under that very *Notion* rejected and expelled by him?

How then did our *Biſhops*, &c. derive all their power from the *Pope* before *Hen.* 8. to ſay ſo, is not more like an *Hobbiſt* than a *Papiſt*. I thought I had caught an *Hobby*, but *War-Hawk*.

Proof againſt this Popiſh *principle.*

SECT. I.

From the root and branches of Eccleſiaſtical Power, Donation, Inveſtiture, Laws.

I. It was a known *Law* long before *Hen.* 8. that the *Church* of *England* was founded in *Epiſcopacy* by our Kings, *&c.* and not in the *Papacy*.

25 *Edw.*3. 25 *Edw.*1.

II. The *Collation* and Donation of Biſhopricks, and Nomination of Biſhops did *always* belong to the *King*; yea all the Biſhopricks in this Realm are of the *Kings Foundation*: and the full Right of *Inveſtiture* was ever in the *Crown*. *Coke* 1. *Inſt.* 2. *S.* 648. to deny it may be a *præmunire*.

III. When once the *Biſhops* are legally inveſted, their proper *Juriſdiction* came into their hands, by the *Laws*, without any power derived from the *Pope*: Who ſaith otherwiſe, knows nothing, or means ill.

35 *Hen.*8. 20.

IV. It was acknowledg'd, That *Convocations* are, *always* have been, and ought to be

be Aſſembled by the Kings Writ *only*: 'tis Law, 35 *Hen.* 8. 19.

V. As the *power* to make Laws for the Church was ever in the King, ſo the *Laws* themſelves muſt be his, and *none* other bind us. This *Realm* Recognizing no *Superiour* under *God* but the *King*, *hath been*, and is free from any *Laws*, but ſuch as have been *deviſed* within this *Realm*, or at our Liberty, have been *conſented* to, and made *cuſtom* by *uſe*, and not by any foreign power. 35 *Hen.* 8. 21. *As* 16 *Rich.* 2. 5.

SECT. II.

Juriſdiction.

THUS our *Ancient* Eccleſiaſtical *Governours* and *Laws* depended upon the *Crown*, and not upon the *Pope*, by the *Laws* of *England*, and in the Judgment of all the *States* of the Kingdom before *Hen.* 8. and ſo did alſo the *execution* of thoſe Laws by thoſe Governours in the ſame *publick* Judgment: a little better than Mr. *Hickeringill*'s *Popiſh* opinion.

2. In ſundry old *Authentick Hiſtories* and *Chronicles*, it is manifeſt, that this Realm is an *Empire*, having an *Imperial Crown*, to which belongs a *body Politick*, compacted of *Spiritualty* and *Temporalty*: furniſhed *thus*, with ---- *Juriſdiction* to yield Juſtice *in all cauſes* without reſtraint from any foreign Prince.

The body *Spiritual* having power, when any Cauſe of *Divine Law* happned to come in queſtion, the *Engliſh* Church, called the *Spiritualty*, which *always* hath been reputed, and alſo found of that ſort, for knowledge, *&c.* (without any *exteriour* perſon) to declare and determine all ſuch doubts, and to adminiſter all ſuch *offices* as *appertain* to them: for the due adminiſtration whereof the *Kings* of this Realm have *endowed* the ſaid Church both with *honour* and *poſſeſſions*: *both* theſe Authorities and Juriſdictions do *conjoyn* in the due Adminiſtration of Juſtice the one to help the other.

And whereas the King his moſt noble *Progenitors*, and the *Nobility* and *Commons* of this *Realm* at divers and ſundry *Parliaments*, as well in the time of King *Edw.* 1. *Edw.* 3. *Rich.* 2. *Hen.* 4. (all which were certainly before *Hen.* 8.) and other noble Kings made ſundry Ordinances, *Laws*, Statutes, and proviſions for the entire and ſure preſervation of the Prerogatives and Juriſdiction *Spiritual* and Temporal of the ſaid Imperial Crown, from the *annoyance* and Authority of the See of *Rome* from time to time, as often as any ſuch attempt might be known or eſpied. *Vid.* 25 *Hen.* 8. 12.

Theſe things plainly ſhew, that the whole State in *Hen.* 8's. time was not of Mr. *Hickeringill*'s mind; but that before that time, the whole power of the *Church* was independent on the *Pope*, and not derived from him, but *originally* inherent in the Crown and Laws of *England*, whatever

he

he blatters to the contrary. *Vid.* 25 *Edw.* 3. *Stat.* 4. *cap.* 22. *pag.* 123. *Sect.* 3. 27 *Edw.* 3. *cap.* 1. *&* 38 *Edw.* 3. *c.* 4. *&* *Stat.* 2. *c.* 1. 2 *Rich.* 2. *cap.* 6. 3 *Rich.* 2. *c.* 3. *S.* 2. 12 *Rich.* 2. *c.* 15. *&* 13 *Rich.* 2. *Stat.* 2. *c.* 2. 16 *Rich.* 2. *c.* 5. 2 *Hen.* 4. *c.* 3, *&* 4. 7 *Hen.* 4. *c.* 6. 9 *Hen.* 4. *c.* 8. 1 *Hen.* 5. 7. 3 *Hen.* 5. *Stat.* 2. *c.* 4. Adde to theſe Mr. *Cawdries* Caſe in my Lord *Coke*, and he muſt be unreaſonably *ill affected* to the *Church* of *England*, that is not more than ſatisfied, that the chief and *Supream* Governours thereof, were the *Kings* of *England*, and not the Pope, before the Reign of *Hen.* 8.

3. Alſo it was the ſence of the *whole Kingdom*, that the Pope's power and Juriſdiction here, was uſurped and *illegal*; contrary to *Gods* Laws, the *Laws* and *Statutes* of this Realm; and in derogation of the *Imperial Crown* thereof: and that it was *timorouſly* and ignorantly ſubmitted unto, before *Hen.* 8. as the words of that Statute are, 28 *Hen.* 8. *cap.* 16.

SECT. III.

BUT if our Gentleman be wiſer than to believe their *words*; the *matter* is evident in our ancient *Laws*, and conſtant practice accordingly, before *Hen.* 8. his time: Indeed all the Statutes of proviſion againſt foreign powers, are to *own* and *defend* the *Eccleſiaſtical* Juriſdiction at home, under this *Crown*. Yea all the *Statutes* made

on

on purpoſe, to reſtrain and *limit* the Spiritual Juriſdiction in certain *caſes*, and reſpects, do allow and eſtabliſh it in others, *exceptio confirmat Regulam in non exceptis.*

2. Much plainer, all the Statutes that *prohibit* the Kings *Civil* Courts to interrupt the *Eccleſiaſtical* proceedings, but in ſuch caſes, and the Statutes granting *conſultations* in ſuch caſes; and the Statutes directing *appeals* in the Spiritual Courts, and appeals to the *Chancery* it ſelf, and the Laws ratifying and effectually binding their *Sentence* by the *Writ de exc. cap.* much more plainly do *theſe* eſtabliſh the Eccleſiaſtical Juriſdiction in the *laws* of the Land, before *Hen.* 8.

3. By this time 'tis vain to mention the *Statutes* which of old did *ſpecifie* and allow particular matters to be tried only in the *Eccleſiaſtical* Courts: ſuch as *Tithes*, 18 *Edw.* 3. 7. the *offences* of *Eccleſiaſtical* perſons, 1 *Hen.* 7. *c.* 4. cauſes *Teſtamentary*, 18 *Edw.* 3. 6. *Synodals* and procurations, and penſions, *&c.* 15 *Hen.* 8. 19. *Defamations*, 9 *Edw.* 2. 3. 1 *Edw.* 3. *c.* 11, *&c.* all which are clear evidences that the Eccleſiaſtical Juriſdiction was eſtabliſh'd by the *Statute*-laws of this Realm, and conſequently, did not depend upon, was not derived from any foreign power before the 20 of *Hen.* 8.

SECT.

SECT. IV.

TO ſeek for the *Original* of our *Eccleſiaſtical* Juriſdiction and Courts, in the *Statute-book*, is more than ridiculous; ſeeing they *both* ſtood in a flouriſhing eſtate *long before* the beginning of that *book*: and are among the number of the great things, which were *then*, *ſecundum conſuetudinem & leges Angliæ*, and are plainly eſtabliſh'd in the *Common Law* of the Land: by which they have ſtood and been practis'd, ever ſince (as we ſhall prove more fully anon.)

2. *Magna Charta*, which is found *firſt* in the book of *Statutes*, and is ſaid by *Lawyers* to be *Common Law* (*i. e.* ſhews us what is *Common Law*) in this Kingdom; begins thus, *We have granted and confirmed for us and our Heirs for ever*, that the *Church of England* ſhall be *free*; and ſhall have all her *whole Rights* and *Liberties Inviolable*. Reſerving to all *Archbiſhops* and *Biſhops*, and all perſons as well Spiritual as Temporal all their Free Liberties and free *Cuſtoms*, which they have *had in times paſt*, and which *we have granted to be holden within this Realm*; and all men of this Realm, as well *Spiritual* as *Temporal*, ſhall *obſerve the ſame againſt all perſons*.

3. Now what can any man, that knows the practice of the *Spiritual* Courts, *before* that time, at *that* time, and *ever ſince*, imagine what is meant by the *Liberties* and

Cuſtoms

Cuſtoms of the Church, (*i. e.* in the ſence of Mr. *Hickeringill*) and the words of *Magna Charta*, *Archbiſhops*, *Biſhops*, and all *Spiritual* men, but the *Juriſdiction Eccleſiaſtical* in the *firſt* and chief place? And theſe, by the great Charter, are confirm'd for ever; and the like confirmation hath been made by the many ſucceeding *Kings* and *Parliaments*, in their confirmation of *Magna Charta*.

4. Therefore I cannot but conclude, that the Eccleſiaſtical Juriſdiction being founded in the Common Law, *Magna Charta*, and the *Statutes*, by ſo long practice beyond all *Records*, is in the very *Conſtitution* of the Kingdom: The great men of the Church having always had authority in the very *making* of *Laws* as they had before *Magna Charta*, and been reputed (as in the Statute of *Eliz.*) one of the three States in Parliament; and the Execution alſo of the Eccleſiaſtical Laws of the Church of *England*.

SECT. V.

LASTLY, All this is plainly confirm'd by ancient *Eccleſiaſtical Canons* (which ſeems to be an Argument of great weight with Mr. *Hickeringill*) as well as by the *Ancient Laws* and Cuſtoms of the Land.

In the *Apoſtles Canons* 'tis ordained, that every *National Church* ſhould have its own chief

chief or *head*, and thence derive all *Power* under the *Crown:* 'Tis acknowledged, againſt the *Papiſts*, that we had our *Archbiſhops* and *Biſhops* before the *Uſurpation* of the *Pope:* We were anciently a *Patriarchate* independent upon *Rome:* The *four* firſt *Councils* confirm'd the *Apoſtles Canons*; and eſtabliſh'd our ancient *Cyprian* priviledge: Let after-*encroachments* of the *Pope* be accordingly renounced as *lawleſs Uſurpations:* Let us quietly enjoy our *reſtored* ancient priviledges; and let *ancient Cuſtom prevail*, according to the Sentence of the *ancient Councils*, in ſpight of all *Papiſts* and *Hobbiſts*.

CHAP. III.

King Hen. 8. *did not, by renouncing the* Power *pretended by the* Pope, *make void the* Eccleſiaſtical *Juriſdiction: neither was it* void *before it was* reſtored *by* 1 Edw. 6. 2.

IT's ſomewhat difficult to make this Propoſition than it is in its ſelf more plain: pray Mr. Wiſe-man, where and by what words did *Hen.* 8. cut off, as you ſay, all thoſe *ordinary Juriſdictions?* Did that great *Prince* and his *Parliament* intend by any *Statute* then made, to cut them off, or not? If they did intend it, how came it to paſs

paſs that they *continued* in their *uſual* courſe of power and *proceedings* all the reſt of his Reign? which may be preſumed to be near *ten* years? Was that watchful *Prince* ſo aſleep? was the whole Kingdom ſo ſtupid, ſo long a time, to ſuffer ſuch oppreſſion, by *invaſion* of the *Crown* and the peoples *Liberties*, by a company of *Church*-men, now *deprived* of the *Pope*'s aſſiſtance, and without any power at all? or were the *Eccleſiaſtical* Governours ſo *deſperate* or careleſs, as to lie under ſo much danger of *præmunire*, neither deſiſting to act *without* power, nor to *ſue* for it?

2. But perhaps, though the *King* and *Parliament* did not intend it, yet the *words* of the *Statute* expreſs enough to diſſolve and cut off all thoſe ordinary *Juriſdictions*: and no body could ſee through this *milſtone*, or tumble it upon the Churches head, before Mr. *Hickeringill* was inſpired to do it in a *lucky* time. I will anſwer him with a *ſtory*; There was a certain *Lord* laid claim to a *Mannor* that was in *another* Lord's *poſſeſſion*: upon *Trial* it was found, that the *Plaintiffe* had the Right of it; and he that had had poſſeſſion was *thrown* out, and the other (the Right Owner) was, as he ought to be, put into the *poſſeſſion* of the ſaid *Mannor*; but it was obſerved, that, though the *Lords* were changed, yet the *Cuſtoms*, and *Courts*, and *Officers* were *not* changed at all, but all things proceeded as before.

3. Thus King *Hen.* 8. and his *Parliament* expreſs'd themſelves as if on purpoſe to our preſent

preſent caſe; only that the Pope's power then was rather in a *pretended* claim, than in *poſſeſſion*; as is evident from that notable Statute 24 *Hen.* 8. *c.* 12. where we have the Kings *Supremacy* firſt aſſerted, with a body *Politick* of the *Spiritualty* and *Temporalty*, every way furniſh'd with Authorities and Juriſdictions, to adminiſter *Juſtice* to the whole Realm. Thus the *Imperial Crown* fully accompliſh'd, throws off the pretence of the *Pope*, as King *Edw. Rich.* and *Hen.* 4. had done before, yet as they alſo did, reſerves as well the *Spiritualty* and its *Juriſdiction*, as the *Temporalty* and its Juriſdiction. Afterwards

4. The *King* doth by his *Royal aſſent*, and by the *aſſents* of the *Lords Spiritual* and *Temporal*, and the *Commons* Aſſembled, and by the *Authority* of the ſame, *Enact*, Eſtabliſh and Ordain, that all *Cauſes* Teſtamentary, Cauſes of *Matrimony* and *Divorces*, rights of *Tithes*, *Oblations* and *Obventions*, the knowledge whereof, by the goodneſs of *Princes* of this Realm, and by the Laws and Cuſtoms of the ſame, appertaineth to the Spiritual Juriſdiction of this Realm, ſhall be from *henceforth* heard, examined, diſcuſs'd, clearly, finally and definitively adjudged and determined in ſuch Courts, *Spiritual* and Temporal, as the natures of the controverſie ſhall require.

5. 'Tis plain therefore, that though *Hen.* 8. did cut off the *Pope*'s pretence, which is the great *intention* of that excellent *Law*, yet the *Eccleſiaſtical Juriſdiction* was not

not *diſſolved*, but annex'd or declared to be annex'd to the *Imperial Crown* of this *Realm*, and to continue to exerciſe its power in the *Spiritual* Courts, as before, according to the *Laws* and Cuſtoms of the Land. Read the Statute, and you will not only ſee a continuance of the *Spiritual Courts* ſuppoſed and allow'd, but *ſpecial directions* touching *proceedings* and *Appeals* therein.

SECT. II.

IF *King Hen.* 8. did take away the *Eccleſiaſtical* Authority of the Church of *England*, he did either remove the *Officers*, or deny their *power* to make *Canons*, or deſtroy their *Courts*, and the exerciſe of their *Juriſdiction*; but he did do neither, but rather by *Acts* of *Parliament* eſtabliſh'd them all.

I. For the firſt, touching the *Governours* of the Church, conſult Statute 31 *Hen.* 8. 3. that it may be *Enacted by the Authority* of this *preſent Parliament, that all Archbiſhops and Biſhops of this Realm*, may, by *Authority* of this preſent *Parliament*, and not by any *proviſion*, or other *foreign* Authority, *enjoy* and retain their *Archbiſhopricks* and *Biſhopricks* in as *large and ample manner, as if they had been promoted, elected, confirmed and Conſecrated according to the due courſe of the Laws of this Realm:* And that every *Archbiſhop* and *Biſhop* of this Realm may *miniſter*, uſe and *exerciſe* all and every thing and things *pertaining* to the *Office* or *Order* of

of any *Archbiſhop* or *Biſhop*, with all *Tokens, Enſigns and Ceremonies thereunto lawfully belonging.*

Further, that all *Eccleſiaſtical* perſons of the *Kings* Realm, all *Archdeacons*, *Deans*, and *other* having *Offices*, may by *Authority* of this *Act* (and not *&c.*) *adminiſter*, uſe and exerciſe *all things* appertaining to their *Dignities* and *Offices*, ſo it be not expreſly againſt the *Laws* of *God* and this *Realm.*

II. Neither did King *Hen.* 8. take away the *power* of the *Biſhops* and others, to make *Canons* in *Convocation*, as appears by the *Statute* of the 25 of *Hen.* 8. 19. In that *Statute*, among other things, upon the *Petition* of the *Clergy*, two things are granted to our *purpoſe*, touching *Eccleſiaſtical Canons.*

1. The *old ones*; 'tis provided that *ſuch Canons* being *already* made, which be not *contrariant* nor repugnant to the *Laws*, Statutes and Cuſtoms of this *Realm*, nor to the damage of the *Kings prerogative Royal*, ſhall now be uſed and *exerciſed* as they were before the *making of this Act*, till ſuch time as they be viewed by the ſaid Thirty two perſons, according to the *Tenor* of this Act, which was *never* done; therefore ſuch *old Canons* are yet of force by this Act. *Vid. Sect.* 6.

2. For the making of *new Canons*; the *Convocation* hath power reſerved by this ſame *Act*, provided the *Convocation* be called by the *Kings Writ*; and that they have the *Royal aſſent* and *licence* to make, promulgate, and execute ſuch *Canons*: as you may

read *Sect.* 1. of the ſaid *Statute.* Indeed the *Convocation* uſed a *larger* power in making Canons *before*, as is *there noted*, which, they ſay, they will not *henceforth preſume* to do: but it therefore follows, that they may *ſtill* uſe their *power*, ſo *limited* and derived from the *Crown*; which is the evident intention of the Act. For by reſtraining the *Clergy* thus to proceed in making *Canons*, the *Law* allows them the power ſo to do; and by making the exceptions and *limitations* confirms their *Authority* ſo far as it is not excepted againſt.

III. Neither, laſtly, did King *Hen.* 8. take away the *ordinary Juriſdiction* of Eccleſiaſtical Governours as exerciſed in the *Spiritual* Courts, according to the *Laws* and *Canons* of this Church: but indeed eſtabliſh'd them by *Acts* of *Parliament*, as is plainly to be ſeen in the 37 *Hen.* 8. *c.* 16. *Sect.* 4. in theſe words: *May it therefore pleaſe your Highneſs, that it may be Enacted, that all ſingular perſons which ſhall be made* --- deputed to be any *Chancellor*, *Vicar-general*, *Commiſſary*, *Official*, *Scribe* or *Regiſter*, by your *Majeſty or any* of your *Heirs* or *Succeſſors*, or by any *Archbiſhop*, *Biſhop*, *Archdeacon* or *other perſon* whatſoever, *having Authority under your Majeſty, your Heirs and Succeſſors, to make any Chancellor, Vicar-general, Commiſſary, Official or Regiſter, may lawfully execute all manner of Juriſdiction, commonly called Eccleſiaſtical Juriſdiction: and all Cenſures* and *Coercions appertaining* unto *the* ſame, *&c.*

2. 'Tis

2. 'Tis acknowledged, that in the *Sect.* 2. of this *Statute*, it ſeems as if the *Parliament* concluded, that by the 25 of *Hen.* 8. 19. the ancient *Canons* were *abrogated*, which I wonder Mr. *Hickeringill* his ſagacity had not diſcovered: yet 'tis plain enough, that wiſe *Parliament* did not thereby reflect upon or intend *all* the Canons; but *ſuch* Canons, as the preſent *matter* before them was concerned in; that is, *ſuch* Canons as forbad *Eccleſiaſtical* Officers to marry; as the words *Sect.* 1. are, that no *Lay* or *married* man ſhould or might exerciſe any Eccleſiaſtical Juriſdiction, *&c.* directly repugnant to your *Majeſty*'s as *Supream Head*, your *Grace* being a *Lay-man*: then it follows in the next words, And albeit the ſaid *Decrees*, *viz.* being contrary to the Royal *prerogative* as *ſupream Head* of the Church, be in the 25 year of your moſt Noble Reign utterly aboliſhed.

That *this* is the meaning of *that clauſe* is reaſonable to believe, becauſe they take no further care to *correct* the matter, but only by *enacting* perſons lawfully deputed, though they be *Lay perſons*, though married or unmarried, ſhall have power, and may exerciſe *Eccleſiaſtical* Juriſdiction, notwithſtanding any *Law* or Conſtitution to the contrary, as the Statute is concluded.

3. Beſides, we are aſſured, that all the *ancient* Canons, that were *not repugnant* to the Kings *Prerogative*, or the *Laws* and Cuſtoms of this Realm were not *abrogated*, but declared to be of force, *i. e.* to be execu-

ted in the *Spiritual Courts*, as was noted in the very letter of that *Statute* 25 *Hen.* 8. 19. and that *this clauſe*, ſpeaking only of ſuch *Canons* as were *abrogated* by that *Statute*, abrogates nothing that was not ſo, by the *Act* referred to.

4. And thus the *Juriſdiction* and *Canons* of the Church ſtood in force, at the latter *end* of the *Reign* of *Hen.* 8. this *Statute* being made in the *laſt* year, wherein any were made by that great *Prince*.

5. Thus we have found in the time of King *Hen.* 8. an *Eccleſiaſtical Juriſdiction* exercis'd in *England*, without any dependance on the *Pope*, and other Authority for *Canon-makers Synodical* (as Mr. *Hickeringill* cants) beſides the *Statute* for the *High Commiſſion* 1 *Eliz.* upon which *Statute* of *Eliz.* Mr. *Hickeringill* very learnedly aſſerts the Authority of all *Canon-makers Synodical* was built: *qu. Naked Truth.*

SECT. III.

NO more is needful under this *Head*, but to ſhew my reſpect to Mr. *Hickeringill* his *doughty* and *only* Argument, taken out of the *Petition of the Clergy to Queen Mary*; whereby he would fain prove, that the *extinguiſhing Act* of *Hen.* 8. took away all *ordinary Juriſdiction* from the Church of *England*, and that there was no ſuch thing till ſhe revived it.

2. The

2. The words of the *Petition*, from whence he thus argues, you ſhall have in his *own Tranſlation*, in this manner: they pray that her *Majeſty would make ſuch proviſion, that thoſe things which belong to our Eccleſiaſtical Juriſdiction and Liberties* (without which we cannot duly diſcharge, *&c.*) *and taken from us lately by the Iniquity of the times, may be again* reſtored; and that all Laws which have taken *away, or do any ways hinder* our *Eccleſiaſtical Juriſdiction and liberties*, may be *made null and void.* Hence he concludes, that in the judgment of the *Convocation* at that time, their *Juriſdiction* and Liberties were taken away. Is this proof ſufficient againſt all the *laws* and *practice* of the Kingdom during the Reign of *Hen.* 8. after the extinguiſhing Act? or do they ſay that *Hen.* 8. took away the *Eccleſiaſtical* Juriſdiction? how can Mr. *Hickeringill* divine that it was not the *renouncing* the *Pope* as *Head* of their *Juriſdiction* and Liberties, that was the very *grievance* that they complain'd of?

3. This is certain, that *Queen Mary* ſucceeded *Edw.* 6. that *Edw.* 6. did require more *expreſs Teſtimonies* of the *Clergie*'s Recognition of the *Crown*, in the exerciſe of the *Eccleſiaſtical Juriſdiction* by the *Statute* (of which we ſhall take more notice preſently) than *Hen.* 8. did; and 'tis paſt Mr. *Hickeringill* his *skill* to prove, that the *Convocation* in their ſaid *Petition*, did not *principally*, if not *only* intend that ſevere *Act* of *Edw.* 6. However that paſs, Mr. *Hickeringill* his argument,

gument, deſerves not the ſtrength of a *Convocation* to confute it.

4. I leave it to Mr. *Hickeringill* himſelf; for if he think, that that *Convocation* ſpake that which was not *true*, he hath ſaid nothing to the *purpoſe*: but if he think they did ſpeak *truth*, then he thinks, that the *Juriſdiction* of the Church of *England*, as derived from the King, according to the *Statute* of *Edw.* 6. or in *Hen.* 8's time, was no *lawful* Juriſdiction, that is, Mr. *Hickeringill* thinks as the *Papiſts* think; *War Hawk* again Mr. *Hickeringill*, and a *præmunire* too.

But this brings us to conſider the Statute of *Edw.* 6.

CHAP. IV.

Eccleſiaſtical Juriſdiction *is lawfully exercis'd, without the* Kings Name *or* Stile *in* Proceſſes, *&c. notwithſtanding the* 1 Edw. 6. 2.

THat all *Eccleſiaſtical Proceſſes* ſhould be in the *Name* and *Stile* of the King, *&c.* according to the Statute of 1 *Edw.* 6. 2. is the great and old *Objection*, not only of Mr. *Hickeringill*, but ſeveral others.

SECT.

SECT. I.

Anſw. But firſt, if this *Statute* were not *repealed* (as indeed it is) there are ſeveral things in the *body* of it very conſiderable againſt Mr. *Hickeringill*, and to our *advantage*.

1. The Statute obſerves in the very *foundation* of it, that it's juſtly acknowledged by the Clergy of the *Realm*, that all *Courts* Eccleſiaſtical within the *Realms* of *England* and *Ireland*, be kept by no other Power or Authority, but by the Authority of the *King*; which, it ſeems, was then known without the *Teſtimonies* thereof, *then* to be required; and indeed is ſo ſtill by the *Oaths* which all *Eccleſiaſtical* perſons chearfully take before their *Inſtalment*.

2. That there was ſuch a thing in *practice* before the making this *Act*, as *Eccleſiaſtical Juriſdiction* in the Church of *England*: for the *Statute* ſaith, that *Archbiſhops*, &c. *do uſe to make and ſend out* their *Summons*, &c. in their *own names* at that time, who yet acknowledged all their *Authority* from the *Crown*, *Sect.* 3.

3. The Statute allows the *Eccleſiaſtical* Juriſdiction it ſelf; and that the *Archbiſhops* and *Biſhops* ſhall make, admit, *&c.* their *Chancellors*, and other Officers and Subſtitutes, which ſuppoſeth the Conſtitution of the *Spiritual Courts*, under *their own names*, and with *their own Seals*, *Sect.* 6.

4. This *Statute* alſo allows, that ſome things are limited by the *Laws* and Cuſtoms of this Realm, and if ſuch things are depending in the Kings Courts of Record at *Common Law*, are to be *remitted* to the *Spiritual* Courts to *try* the ſame, *Sect.* 7.

5. But what is the *penalty* if they do not uſe the Kings Name and Stile, and put the Kings Arms into their Seals of Office? This is conſiderable. 'Tis well the *Statute* provided a better hand to puniſh the delinquents than Mr. *Hickeringill*, and a milder puniſhment than he interprets the Law to do: the puniſhment is the Kings diſpleaſure, and impriſonment during his pleaſure; not the voiding the Juriſdiction, as Mr. *Hickeringill* would have it: And while the King knows the Statute is repealed, as ſhall next appear, we fear not but his Majeſty is pleaſed with, and will defend our Juriſdictions, while we *humbly* acknowledge their *dependency* on the *Crown*, and exerciſe the ſame, according to his *Laws*, though we *preſume* not to uſe his *Name*, and *Stile*, and *Arms*, without the *warrant* of Law.

Sect. 4.

SECT. II.

1. FOR that *Statute* of 1 *Edw.* 6. 2. was *repealed* by the *firſt* and *ſecond* of *Philip* and *Mary*, *c.* 8. wherein we have theſe plain words; "The Eccleſiaſtical *Juriſdiction* of "the *Archbiſhops* and *Ordinaries* (are de-"clared) to be in the *ſame ſtate* for *proceſs* of

"of *ſuits*, *puniſhment* of crimes, and *exe-*
"*cution* of the Cenſures of the Church,
"with *knowledge* of *cauſes* belonging to the
"ſame; and as large in theſe points, as the
"ſaid *Juriſdiction* was the ſaid *twentieth*
"year of *Hen.* 8. whereby that Statute is al-
ſo *revived*, as my L. *Coke* affirmeth.

Thus, by *Act* of *Parliament*, of which that Queen was the undoubted *Head*, (and by the power of the *Crown* of *England*, and not the *Pope*) the Eccleſiaſtical *Juriſdiction* of this *Realm* was eſtabliſhed by our own *Law* in the *ſame ſtate* wherein it ſtood before the twentieth of *Hen.* 8. and then, we find, that by our *ancient Laws* and Cuſtoms, it was dependent on the *Crown*, whatever ſome *Church-men* thought to the *contrary*.

2. I have read, that this ſame Queen *Mary* wore the Title of *Head of the Church* of *England* her ſelf; though in other points too too zealous for *Popery*: and by this very *Statute* it is *Enacted*, That nothing in this Act ſhall be conſtrued to *diminiſh* the *Liberties*, Prerogatives, or *Juriſdictions*, or any part thereof, which were in the *Imperial Crown* of this *Realm* the twentieth year of *Hen.* 8. or any other the Queens *progenitors* before: And we have found, that the Eccleſiaſtical *Juriſdiction* of this Kingdom was ſubject to, and *dependent* on the Imperial *Crown*, *ſecundum conſuetudinem & legem Angliæ* in her *Anceſtors* time: We have found alſo, that this was the undoubted Judgment of the whole *Kingdom* in the *Statutes* of *Hen.* 8. *Edw.* 6. Queen *Eliz.* King *James*, &c.

Now

Now let it be ſhewn, that this clauſe of the *Statute* of *Queen Mary* is *repealed*, which is ſo agreeable to the *ancient Cuſtoms* and Rights of the *Crown*; let this be ſhewn, and you do ſomething: This Statute of my Lord *Coke*'s is not repealed by the 1 of *Eliz.* or King *James*, though the 1 of *Mary* ſhould be *granted* to be ſo. Alſo the 25 *Hen.* 8.20. being contrary to 1 *Edw.* 6.2. is revived by 1 *Eliz.* and never repealed. *Rep. Coke* 12. *p.* 9.

I. Mr. *Hickeringill* indeed is *bold* enough, but I find Mr. *Cary* timerous in the point, though againſt the *hair*: for though he toll on his weak and prejudic'd *readers*, to their great *hazard*, in putting their whole *caſe* upon this *one point*, whether the *Court* can ſhew the *broad Seal*, &c. yet when he comes home to the matter, he tells them, that the aforeſaid *Statute* of *Edw.* 6. not being mentioned by King *James*'s Act of *repeal*, and expreſly *revived*, is thought *not* to be of force; ſo that a *citation* in the *Biſhops own name*, may, at this day, be *good in Law*. *Law of Engl. c.* 2. *p.* 12. Mr. *Hickeringill* ſhould have taken the advice of this his friend, a great *Lawyer* certainly, that entitles his *minute* and thin piece, the *Law of England*.

SECT. III.

Mr. *CARY* indeed miſtakes the Statute; for it is the firſt of King *James* 25. not

not the fourth: yet we have his learned opinion, that *Citations* in the *Biſhops own name, may, at this day, be good in Law*; and for ought I know, his *reaſon* for it may be *good* too, *viz.* becauſe the *Statute* of Queen *Mary*, eſpecially that of the firſt and ſecond of *Phil.* and *Mar. c.* 8. is not in the ſaid Act of *repeal expreſly* revived, according to the expreſs words of the Act, *vid.* 1 *Eliz. ſect.* 13. But, O Mr. *Cary!* though we have here your *opinion* and your *reaſon*, where was your *Conſcience?* where was your *kindneſs* to your beloved diſſenting *Clients?* when you dared to betray them to the *Devil* and the *Gaoler* (to ſpeak in Mr. *Hickeringill*'s language) (a far heavier ſentence than *Curſe ye Meroz*) and that upon no other ground, that I can find, in your *Engliſh Law*, but this *Statute* only; which yet for the *reaſon* aforeſaid, you ſay, is thought not to be of *force*; and though, you ſay, the *Biſhops* may at this day ſend forth *Citations* in their *own names* by Law; yet your grave advice to thoſe friends is this; *When you are Cited, appear and demand*, whether they have any *Patent* from the *King* for the ſame, and under his *great Seal* or no; if they will not ſhew you by *what* Authority --- *proteſt* againſt their proceedings, and go your way, *i. e.* the *way* of *diſobedience, contempt*; the way to the *Gaol* and the *Devil*; but that's no matter, he hath ſhewed his ſpite to *Eccleſiaſtical* Authority *againſt* his own *Law* and *Conſcience*: he was not to ſatisfie a *doubt*, but a *luſt*; and his confidence

is

is as able to ſecure the deluded people from the danger of *contempt* of the *Kings* Eccleſiaſtical Courts, as his wiſe Notion of *Magna Charta*, *c.* 14. from paying their Tithes. See this point excellently and fully argued on both ſides, and the Judges, *&c.* Opinion and Reaſons ſilencing this Objection in King *James*'s time, *Coke Rep.* 12. *p.* 7,8,9.

SECT. IV.

1 *Edw.* 6. 2. repeal'd *appears from* practice.

II. A further Argumeut, that the *Stat.* 1 *Edw.* 6. 2. is *repeal'd* is taken from the uninterrupted *practice*, both of the *Eccleſiaſtical* Juriſdiction, and the *Kings* of *England*, and their own immediate *Courts*, contrary to it: and I think it is a rule in *Law*, that in *doubtful* caſes, *Lex currit cum praxi.*

1. The *Eccleſiaſtical* Judges have, ever ſince the *Repealing* Act of *Queen Mary*, before and ſince the *Statute* of Queen *Eliz.* and *King James*, called *Statutes* of *repeal*, uncontroulably proceeded in their *own names*, and not expreſly in the *name* or *ſtile* of the *King* (let one inſtance be ſhewn to the contrary) then who can imagine without a *fancy poſſeſt*, that the *Crown* and *States* of the Realm ſhould intend ſo great an *alteration* in the Eccleſiaſtical *government*; and that in the behalf of the *ſupremacy*, and for the Rights of the *Crown*, as is pretended, by *reviving* that *Act* of 1 *Edw.* 6. and yet, neither

neither then, nor ever *ſince*, expect a conformity to, and obſervance of it? Were Queen *Eliz.* and King *James* ſo *eaſie* and careleſs of their *Crowns* as this would make them? were all the *Biſhops*, who were concerned in making thoſe Acts of *Repeal*, and all Eccleſiaſtical *Judges* ever ſince, ſo dull and ſtupid, as not to know the force of thoſe *Acts*; not to mind either their *duty*, or their *ſafety*, in ſo great and hazardous a point, as ſome would have it of a *præmunire*? or ſo fool-hardy, as to bear againſt the *Crown* it ſelf, on which alone they know they depend againſt plain *Acts* of *Parliament*, in the midſt of froward and watching enemies on every ſide them? who can think it? I muſt conclude, that if it be poſſible that the Act of Queen *Mary* ſhould be *repeal'd* in this point, either by Queen *Eliz.* or King *James*, 'tis more than ever the *Law-makers* themſelves thought of, underſtood or intended.

2. For ſecondly, the *practice* of the *Crown* that was in the firſt place highly concern'd in that Stat. 1 *Edw.* 6. 2. hath been ever ſince the Act of Queen *Mary* that repeal'd it, directly contrary to it; and, in a very great point or flower of the *ſupremacy*, manag'd it ſelf *ever ſince*, juſt as it did before that Act of *Edw.* 6. and, as I ſaid, directly contrary to it: therefore 'tis paſt all doubt but that the ſence of the *Queen* and *Kings* of *England*, and the ſence of thoſe *great Lawyers* and States-men, that direct the *Crown* in ſuch great affairs, is evident,

evident, that the Statute of *Edw.* 6. ſtands *repealed*, and is not *revived*; for in that Stat. 1 *Edw.* 6. 2. 'tis expreſly *enacted*, that whereas elections of *Biſhops* by *Deans* and Chapters upon a *Writ of Congee d'eſlire* --- ſeeming derogatory and prejudicial to the Kings *prerogative* Royal; for a due reformation thereof, be it enacted, that from henceforth no ſuch *Congee d'eſlire* be granted, nor *election* made, but, *&c.* yet ever ſince *Congee d'eſlires* have been granted, and ſuch elections thereupon have been returned and accepted.

3. The Kings *immediate* Courts, ſo far as they have been concerned with *Juriſdiction* of the *Church*, and the Kings Civil Judges therein, have *ever ſince* own'd, and as occaſion hath required, *ratified*, fortified, and made effectual all our *Eccleſiaſtical* proceedings ever ſince, though not acted in the *Kings name*, contrary to the ſaid Statute; though 'tis a great part of their *places* and offices to *ſecure* the *Prerogative* againſt all *Invaſion*, eſpecially of the *Church*: thus by their conſtant *practice* it appears, that they never underſtood that *Statute* of *Edw.* 6. to be in force, ſince Queen *Mary* repealed it: Was the whole Kingdom ſo long, and in ſo deep a ſleep, to be awakened by ſuch impertinent and little barkings?

SECT.

SECT. V.

1 *Edw.* 6. 2. *Repealed in the Judgment of all the Judges, the King and Council.*

THE *objection* from the 1 *Edw.* 6. is no *new light* of Mr. *Hickeringill*'s, we find it buſie in the time of King *Charles* the *firſt*, *Anno* 1637. and by the Kings Proclamation it ſeems it had troubled the Kingdom before, as indeed it had in the Fourth of King *James*. In that year 1637. upon an *order* out of the *Star-chamber*, the learned Judges were commanded to give their opinion in this matter: and they all met together, and deliberately, and diſtinctly, and fully declared, that the 1 *Edw.* 6. 2. is *repealed*, and is not in force; and that the *Eccleſiaſtical* Judges did (in all the points called in queſtion) act *legally*, and as they ought to do; hereupon the *King* and *Council* being ſatisfied, iſſued forth the ſaid *Proclamation* to ſilence and prevent all ſuch objections againſt *Eccleſiaſtical* Judges, *Courts* and proceedings for the *future*; and the judgment of the *Judges* under their hands, was *inrolled* in the *Courts* of *Exchequer*, *Kings Bench*, *Common Pleas*, &c. as *Law*; where any one may find it that deſires to be further ſatisfied in the truth of it.

2. Hence I argue, that that *Statute* of 1 *Edw.* 6. is repealed in *Law*; at leaſt that the *ſubjects* ought ſo to eſteem it, until they have the judgment of the *Judges* declared *otherwiſe*;

wiſe; yea, though thoſe Judges (which is profane to imagine) did *erre* in that their Declaration through ignorance or fear of the *High Comiſſion*, as Mr. *Hickeringill meekly* inſinuates, *p. ult.*

For the *Law* is known to the *ſubject*, either by the *letter* or by the *Interpretation* of it: and if the letter of the Law be not plain, or be *doubtful*, we take the *Interpretation* of it from ſuch as by *law* are of right to make the Interpretation, *to be the law*; and this I think is the *Common Law* of *England*, and believe that Mr. *Cary* himſelf thinks ſo too.

3. Now, who is or can be thought to be the moſt proper *Interpreter* of a doubtful Law, but the *King* with his *Council*, by *all* the *Judges* of the Land? eſpecially if that *law* concern *Eccleſiaſtical* Juriſdiction, and the Eccleſiaſtical Supremacy of the *Crown*, as the *law* in queſtion plainly doth. But the *King* himſelf with his *Council*, by *all* the *Judges* of the Land, hath ſolemnly declared, that the 1 *Edw.* 6. 2. is *repealed*, and not of force; this is a *legal interpretation* of the *law*; this is *law*, and ought ſo to be taken, *rebus ſic ſtantibus*, by all the *ſubjects* of *England*, whatever little men that talk of the *law* in their own narrow and *private* ſentiments preſume to vent, to the *ſcandal* of the people, the *trouble* of the Kingdom and *ſlander* of the Church, and *Eccleſiaſtical proceedings*: and indeed it would be an inſufferable *ſawcineſs*, to ſay no worſe, for any Eccleſiaſtical *Judge* to *act* by a *law* that

is

is *none*; againſt the ſo ſolemn *declaration* of the *King*, the *Council*, and all the *Judges* of the Land, and this is the caſe.

I ſhall therefore trouble, if not pleaſure, my reader with the Declaration of the Judges, and the ſence of the King and Council of it.

Primo Julii 1637.

The Judges Certificate *concerning* Eccleſiaſtical *Juriſdiction.*

May it pleaſe your *Lordſhips*,

ACcording to your Lordſhips Order made in his Majeſties *Court of* Star-Chamber *the Twelfth of* May *laſt, we have taken conſideration of the particulars, wherein our Opinions are required by the ſaid Order, and we have* all *agreed*:

That Proceſſes *may iſſue out of the Eccleſiaſtical Courts, and that a* Patent *under the great Seal is not neceſſary for the keeping of the ſaid Eccleſiaſtical Courts, or for the enabling of* Citations, *Suſpenſions, Excommunications, or other* Cenſures *of the Church; and that it is not neceſſary that* Summons, *Citations, or other Proceſſes Eccleſiaſtical in the ſaid Courts, or Inſtitutions, or Inductions to*

Benefices, or Correction of Eccleſiaſtical Offences by Cenſure in thoſe Courts, be in the Name *or with the* Stile *of the King, or under the Kings* Seal; *or that their* Seals *of* Office *have in them the* Kings Arms. *And that the Statute of* primo Edvardi Sexti c. 2. *which Enacted the* Contrary, *is* not *now in force.*

We are alſo of Opinion, that the Biſhops, Archdeacons, *and other Eccleſiaſtical Perſons may keep their* Viſitations *as uſually they have done, without* Commiſſion *under the* great Seal *of* England *ſo to do.*

John Brampſtone,	George Crooke,
John Finch,	Tho. Trevor,
Humph. Davenport,	George Vernon,
Will. Jones,	Ro. Berkley,
Jo. Dinham,	Fr. Crawly,
Ri. Hutton,	Ri. Weſton.

Inrolled in the Courts of Exchequer, Kings Bench, Common Pleas; and Regiſter'd in the Courts of High Commiſſion and Star-Chamber.

Hereupon followed the *Kings Proclamation*, declaring that the proceedings of his Majeſties *Eccleſiaſtical* Courts and Miniſters are according to the *Law* of the Land; as are the words of the Title. I ſhall only tranſcribe

transcribe the *Conclusion* of the *Proclamation*, which you have faithfully in these *words.*

AND *his Royal Majesty hath thought fit, with the* **Advice** *of his* **Council,** *that a publick* Declaration *of these Opinions and Resolutions of his Reverend and Learned* **Judges,** *being agreeable to the Judgment and Resolutions of* former *times, should be made known to all his* Subjects, *as well to* Vindicate *the legal proceedings of his* Ecclesiastical *Courts and Ministers, from the unjust and* Scandalous *imputation of invading or entrenching on his* **Royal Prerogative,** *as to settle the minds, and stop the mouths of all unquiet Spirits; that for the future they presume not to* censure *his* **Ecclesiastical** *Courts and Ministers in these their* **Just** *and Warranted proceedings: And hereof his Majesty admonisheth all his* **Subjects** *to take* **Warning,** *as they shall answer the Contrary at their* Perils: *Given at the Court at* Lindhurst, Aug. 18. *in the Thirteenth Year of his Majesties Reign.*

God save the King.

 You

You may ſee the *Caſe* fully, the Reaſons on *both ſides*, and the Judges *determination* the Fourth of King *James*, to which this Proclamation may refer, *Coke Rep.* 12. *p.* 7, 8.

Now I could almoſt ſubmit it to Mr. *Cary* or Mr. *Hickeringill* himſelf, whether it be fitter or ſafer for *Eccleſiaſtical* Judges to proceed in their Courts as they now do; or alter their proceedings, and preſume upon the *King*, by uſing his Royal *Name*, and *Stile*, and *Arms*, contrary to all this *Evidence*, and Reaſon, and Law.

SECT. VI.

Mr. H. Cary's *Reaſon to the contrary conſidered.*

BUT Mr. *Cary* ſaith, He ſeeth not a *drachm* of *Reaſon*, why the *Spiritual* Courts ſhould not make their *Proceſſe* in the *Kings name*, as well as the *Temporal* Courts, ſince *thoſe*, as well as *theſe*, are the *Kings Courts*.

He ſeems to talk *Pothecary*, without ſo much as a drachm of *Reaſon*; the *uſage* of the Courts, and the *evidence* aforeſaid, is better *Law* than his pitiful *gueſſes*. Neither is there *colour* of Reaſon in what he ſaith, if theſe *two* things appear.

1. That the Eccleſiaſtical Miniſters do *ſufficiently* and openly acknowledge the *dependance* of their *Courts* upon the *Crown* without uſing his *Majeſties Name*, or Stile, or Arms.

2. That

2. That there is not the *ſame* reaſon that the *Spiritual* Courts ſhould uſe the Kings Name, *&c.* that there is for the *Temporal.*

1. For the *firſt*, the *Eccleſiaſtical* Judges accept their places thankfully as the *Kings donation*, and not the *Popes:* then they readily grant they depend upon the *Crown*, even for the *exerciſe* of their *Spiritual function*; and that they receive all coercive and external Juriſdiction immediately from the *Crown* and the *Laws* of the Land, and not from the *Pope.* Again, they all take the *Oaths* of *Supremacy* and *Allegiance* before their *Inſtalment*, which are the *fence* of the *Crown* againſt *Popery.* And then in all their publick *Prayers* before their *Sermons*, the *Biſhops* and *Archdeacons*, &c. do Recognize the Kings Supremacy in all Eccleſiaſtical things and cauſes as well as *Civil.* Again, they Take the late *Teſt* and the ſame *Oaths* at the *publick Seſſions.* And laſtly, Mr. *Cary* himſelf confeſſeth, that they acknowledge the ſaid Supremacy in their publick *Canons* or Conſtitutions of the whole Church of *England*, as he notes *p.* 2. in *Can.* 1, 2. 1603. And are all theſe leſs ſignificant to teſtifie their *dependance* on and acknowledgement of their derivation from the *Crown*, than the *Kings Name*, and *Stile*, and *Arms* (which may be far enough from the Conſcience) in a *Proceſſe?*

2. For the *ſecond*, that there is not the *ſame reaſon* to uſe the *Kings name* in *Eccleſiaſtical* as in *Civil* Courts, is apparent from the true cauſe of uſing it in the Civil Courts,

which being not known or well heeded, may be the cauſe of the exception: for Biſhop *Sanderſon* hath well obſerved the true reaſon of uſing the *Kings* name in any Court, is not thereby to acknowledge the *Emanation* of the power or Juriſdiction of that Court from, or the *ſubordination* of that power unto the *Kings* power or Authority, as the *objector* ſeems to ſuppoſe; but rather to ſhew the ſame Court to be one of the *Kings* own *immediate* Courts, wherein the *King* himſelf is ſuppoſed (in the conſtruction of the *Law*) either by his *perſonal* or *virtual* power to be *preſent*; and the not uſing the Kings name in *other* Courts doth not ſignifie, that they do not *Act* by the Kings Authority, but only that the *Judges* in them are no immediate *repreſentatives* of the Kings *perſon*; nor have conſequently, any allowance from him to uſe his *Name* in the execution of them.

1. This difference is evident among the *Common Law* Courts of this Kingdom; for though all the immediate Courts of the *King* do act expreſly in his *Name*, yet many other more *diſtant* Courts do not; as all *Courts-Baron*, *Cuſtomary-Courts* of *Copyholders*, &c. and ſuch Courts as are held by the Kings *grant*, by *Charter* to Corporations, and the Univerſities: in all which *Summons* are iſſued out, and *Judgments* given, and all *Acts* and proceedings made and done in the name of ſuch perſons as have *chief* Authority in the ſaid Courts, and not in the Name of the King; thus

their

their ſtiles run; *A. B. Major Civitatis Exon. N. M. Cancellarius Univerſitatis Oxon.* and the like, and not *Carolus Dei gratia.*

2. Once more a little *nearer* to our caſe; there are other Courts that are guided by the *Civil* (as diſtinguiſh'd from the *Common*) Law; as the *Court-Marſhal* and the Court of *Admiralty*; the Kings Name in theſe is no more uſed, than it is in the Courts *Spiritual*; but all *Proceſſes*, Sentences, and Acts in theſe *Courts*, are in the Name of the *Conſtable*, Head Marſhal, or Admiral, and not in the Kings Name.

3. I ſhall conclude this with thoſe grave and weighty words of the ſame moſt admirable *Biſhop Sanderſon*, in his excellent Treatiſe, ſhewing, that *Epiſcopacy* as *Eſtabliſhed by Law in* England, *is not prejudicial to Regal Power*; worthy of every *Engliſhman*'s reading: his words to our purpoſe are theſe; 'Which manner of proceeding, 'like that of the *Spiritual* Courts, conſtant-'ly uſed in thoſe *ſeveral* Courts before men-'tioned; ſith no man hath hitherto been 'found to interpret, as any *diminution* at all 'or diſacknowledgment of the Kings *Sove-'raignty* over the ſaid Courts: it were not 'poſſible the *ſame* manner of proceeding in 'the *Eccleſiaſtical Courts* ſhould be ſo *confi-'dently* charged with ſo hainous a crime, did 'not the intervention of ſome *wicked luſt* or 'other prevail with men of corrupt minds 'to become *partial judges* of evil thoughts, *p.* 68, 69.

Mr. *Hickeringill* is one of thoſe whom the Biſhop deſcribes, *i. e.* that ſo *confidently* chargeth the Eccleſiaſtical *Courts* with that *hainous crime*, and foundeth that *confidence* in the Statute of the 1 *Eliz.* 1. In charity to him, I ſhall give him ſuch words out of that Statute, as do not only ſecure the Act of Queen *Mary* that repealed the Act of 1 *Edw.* 6. 2. (requiring the uſe of the Kings Name in our proceedings) from repeal in that particular; but directly and expreſly ratifies and confirms the ſame, and our contrary proceedings accordingly. So that our proceedings in the Eccleſiaſtical *Courts* without uſing the Kings Name, or Stile, or Arms, according to 1 *Edw.* 6. 2. are allow'd and eſtabliſhed by this very Act of Queen *Eliz.* thus; Further Enacted by the Authority aforeſaid, that all *other Laws* and branches of any Act repealed by the ſaid *Act* of repeal of *Mar.* and not in this Act *ſpecially* mention'd and revived, ſhall ſtand and be repealed in ſuch manner and form as they were before the making of this Act; any thing herein contained to the contrary notwithſtanding, 1 *Eliz.* 1. 13. but the Act of 2 *Phil.* and *Mar.* was not *ſpecially* mentioned in this Act of Repeal, nor any other: And the Learned Judges in 4 *Jac.* obſerve, that this Act of 1 *Eliz.* revives an Act of *Hen.* 8. repealed by Queen *Mary*, and in both theſe Statutes 1 *Edw.* 6. 2. is made void; and the preſent proceeding of Spiritual *Courts* without the Kings Name, *&c.* plainly confirm'd; but *vid. Coke Rep.* 12. *p.* 7.

CHAP.

CHAP. V.

The Act *of* 1 Eliz. 1. *Eſtabliſhing the* High-Commiſſion *Court, was not the* foundation *of* ordinary *Eccleſiaſtical Juriſdiction in* England, *againſt Mr.* Hickeringill.

THE worthy Gentleman, though he uſeth much Modeſty, and will not *peremptorily aſſert*; and hath only fitted the matter for the conſideration of *wiſer* men (if he can think there be any ſuch) reaſons wonderfully after this *new* and unheard of manner, or to this purpoſe, if at all.

The *Statute* of *Eliz.* for the *High-Commiſſion* Court was the only *Baſis* of all Eccleſiaſtical power; this continued indeed during her time, and King *James*'s; but being *repealed* by 17 *Car.* 1. 11. and 13 *Car.* 2. 12. down came the *Fabrick*; their great *foundation* thus torn up, now they have neither power from *God* nor *man*, nor *ever* ſhall; for his *Majeſty* hath by *Statute* Enacted never to empower them with any more Commiſſions to the worlds end. Now their *baſis* is taken away, I cannot diſcern where their *Authority* lies, *Nak. T. q.* 1. *p.* 4, 5, 6. This is the *Spirit* of his Reaſon, which he confeſſeth is not *infallible*; for he ſaith

ſaith as before, he doth not *peremptorily* aſſert it.

But can a man have the face to write this firſt, and then to ſay he is not *peremptory?* Would a man in his wits expoſe himſelf in this manner in *Print*, and blunder out ſo much prejudice, envy, ſpite and wrath againſt *Government?* and talk ſuch pitiful unadviſed ſtuff about *Law?* and think to ſhake the *Fabrick* of Eccleſiaſtical Juriſdiction, that hath ſtood firm ſo long in the midſt of all its enemies, with *ſhadows of ſtraws?* Had he adviſed with the learned Sage, his Friend Mr. *Cary*, who is the Author of the *Law of England*, certainly he could never have talk'd ſo idly and impertinently, but would have put ſome colours at leaſt upon his honeſt deſigns, as Mr. *Cary* himſelf hath done.

But what if this wiſe Mr. *Hickeringill* erre *fundamentally* all this while? and the *clauſe* of 1 *Eliz.* and conſequently the *Stat.* of *Car.* 1. and 2. touch not, concern not the *ordinary* Juriſdiction of the Church at all? as certainly they do not; and the only wonder is, ſo wiſe a man ſhould not ſee it: A man of ſo great, and long experience, and *practice* in the Juriſdiction and *Laws* of the Church: So diligent and accurate in his writings, and eſpecially of *Naked Truth*; wherein he aſſures us, nothing is preſented *crude* or immature, but well digeſted; as a few of thoſe things that his head and heart, that is, his *ſtomach* have been long full of; as he ſaith, if you will believe him, *p. ult.*

But

But doth not that clauſe that eſtabliſheth the *High-Commiſſion* affect our *ordinary* Juriſdictions at all? what pity 'tis, that ſo excellent a Book as this *ſecond* part of *Naked Truth* is, ſhould miſcarry in its main project, and in the very *foundation* too: the fundamental ſuppoſition, on which all its ſtrength is built; and in a maxim peculiar to the *Authors* invention, and ſingularly his own, for ought I know; and wherein he ſeems to place his *glory*, eſpecially ſeeing, as he tells us, *p. ult.* he has no *pique*, *private* intereſt, or *revenge* to gratifie: and writes only to cure old *Ulcers*; and with ſuch hearty *wiſhes* that Eccleſiaſtical *Juriſdiction*, which is his *Intereſt* as well as others, were of force, ſtrength and vertue, and not ſo diſorderly uncertain and *precarious*; as he proves it to be, without one Argument, if this beloved one, taken from the High-Commiſſion, fail him.

And yet alas! it will fail him do what we can: for the *clauſe* in the *Stat.* 1 *Eliz.* 1.18. granted a power to the *Crown* to eſtabliſh the *High-Commiſſion* Court, as a Court *extraordinary*; conſiſting of extraordinary and *choice* Miniſters, not reſtrained to *ordinary* Eccleſiaſtical *Officers*: and the *ordinary* Juriſdiction did never derive from it, was never diſturbed or altered by it; but was ever from the beginning of it, conſiſtent with and ſubordinate to it; therefore was it call'd the *High-Commiſſion.* This is evident, as from the *concurrence* of both Juriſdictions all a long; ſo from the *letter* of the

Statute

Statute it ſelf, and clearly declared to be ſo by my Lord *Coke*.

This clauſe (ſaith he) divideth it ſelf into two branches, the firſt concerning the Viſitation of the *Eccleſiaſtical* ſtate and perſons; this branch was Enacted out of *neceſſity*, for that all Biſhops and moſt of the Clergy of *England*, being then *Popiſh*, it was *Neceſſary* to raiſe a *Commiſſion* to deprive them that would not deprive themſelves: and in caſe of *Reſtitution* of Religion, to have a more *Summary* proceeding than by the *ordinary* and prolix courſe of Law is required. This branch concerns only *Eccleſiaſtical* perſons: ſo that, as *Neceſſity* did cauſe this Commiſſion, ſo it ſhould be exercis'd but upon *Neceſſity*; for it was never intended that it ſhould be a continual *ſtanding* Commiſſion; for that ſhould *prejudice* all the *Biſhops* in their *Eccleſiaſtical Juriſdictions*, and be grievous to the *Subject*, to be drawn up from all the *remote* parts of the *Realm*, where before their own *Dioceſan* they might receive Juſtice at their own doors.

So that this power of the *High-Commiſſion*, neither granted any *new* power to the *ordinary* Eccleſiaſtical Juriſdiction, nor took away any of the *old*. Yea, it plainly ſuppoſeth the *præ-exiſtence* and exerciſe of the *Eccleſiaſtical* Juriſdiction in an *ordinary* way, and meddles no further with it than to take its *meaſures* from it, which by conſequence allows it *in it ſelf*, as well as for a *Rule* of its own proceedings, as my *Lord Coke* obſerves in theſe words. That

That your Highneſs --- ſhall name --- to execute under your Highneſs --- all manner of Juriſdiction, *&c.* and to viſit and reform, *&c.* all errors, *&c.* which by any *manner Spiritual* or Eccleſiaſtical power --- can or may *lawfully* be reformed, *&c.*

Now if the *ordinary* Juriſdiction by *Biſhops*, &c. did not derive from, or depend on that *High-Commiſſion*, the repealing the *Statute* (I mean the *clauſe*) that impowred the High-Commiſſion can no wiſe affect, much leſs *deſtroy* that *ordinary* Juriſdiction; and Mr. *Hickeringill*'s *foot* is gone from his ground, and the *ordinary* Juriſdiction of the Church of *England* ſtands fix'd upon its *ancient* Bottom, on which it ſtood before the High-Commiſſion, and ever ſince, notwithſtanding the High-Commiſſion is taken away, and ſhould never be granted more.

Now I cannot but obſerve, that Mr. *Hickeringill* hath the ill luck to cut his own *fingers* with every *tool* he meddles with. The *Stat.* of 13 *Car.* 2. 12. which continues the *repeal* of the *clauſe* in 1 *Eliz.* for the High-Commiſſion by the 17 of *Car.* 1. which alſo took away our *Eccleſiaſtical* Juriſdiction; I ſay this *Stat.* 13 *Car.* 2. 12. reſtores the *ordinary* Eccleſiaſtical *Juriſdiction*, and excludes the power of the *High-Commiſſion.*

Whence it is plain, that the Eccleſiaſtical Juriſdiction does not Eſſentially depend on, but may and doth *now* ſtand by *Act* of *Parliament* without the High-Commiſſion.

Again,

Again, whereas 'tis provided that the Juriſdiction ſo *reſtored* ſhall not exceed in *power*, what it was in 1639. it is clear, that the Church had a lawful Juriſdiction before the *Wars*, otherwiſe nothing is *reſtored*: yea, 'tis *non-ſence*, or a deluſion unworthy of a *Parliament*, if they that made that *Act* did not ſuppoſe and *allow*, that the *ordinary* exerciſe of Juriſdiction in the *Spiritual* Courts in 1639. was *according to Law*; and I am ſure that was juſt *ſuch* as is *now* exerciſed.

CHAP. VI.

How *our* Eccleſiaſtical *Juriſdiction in* England *came at* firſt, *and is at* preſent *Eſtabliſh'd by* Law.

TO ſhew how the Eccleſiaſtical Juriſdiction came at *firſt* to be Eſtabliſh'd by *Law*, is a point not ſo *difficult* as much *deſir'd*.

'Tis agreed, I hope, that all *Kindreds*, *Tongues* and *Nations* owe their Obedience to the *Goſpel*, when and whereſoever it comes: and that *England* was one of the *firſt* of the *Nations* that embrac'd it, and became a *Church* of Chriſt; then we were a *rude unpoliſh'd* and Barbarous people, and knew little of Civil *Policy* or order of Government;

vernment; but by the gracious Miniſtery of *Holy* men ſent from *God*, our manners began to be ſoftned, and our minds ſweetned and enlightned, and our *Princes* became early *nouriſhers* and *honourers* of Religion and *Religious* perſons; and good *nurſing Fathers* and *nurſing Mothers* to the *Church* then planting among us; and began to endow it with wealth and power.

Arviragus, *Marius*, *Coilus* (as the three *Kings* in *Malmesb.* are named by *Capgravius*) entertain'd *Chriſtians* exploded from all parts of the World, in this *Kingdom*: and gave them peace, and provided them a Country to dwell in; and firſt gave liberty to build and defend *Churches* in *publick*. *Lucius* the firſt Chriſtian King, built Churches at *his own charge*; firſt conſtituted *Biſhops* Seats, and built dwellings for *Prieſts*, and much *enriched* all things of that nature: and that Religious men might with more *ſafety* enjoy what they had given them, *amplis munivit privilegiis*, fortified them with large *priviledges*.

Here was born alſo (as *Baronius* confeſſeth) *Conſtantine* the Great, who brought *peace* to the whole *Church*; who was the firſt Chriſtian *Emperor*; and likewiſe the firſt Chriſtian *Queen*, his Mother *Helen*.

If we come to the *Kings* of the Ages following, *quis non ſtupeat*, as *Spelman* ſaith, who can chuſe but be aſtoniſh'd at the eximious *Piety*, incredible *Zeal* (*Ardorem*) extraordinary (*Inſignes*) Alms, manifold works of *mercy*, *munificence* towards Gods Miniſters,

Miniſters, and their magnificent and wonderful (*profuſionem*) liberality and *expence*, in building, adorning, *inriching* Churches, inſomuch, as one ſaith, *Mirum tunc fuerat Regem videre non ſanctum*: And as another, There were more holy *Kings* found in *England* than in any one, though the moſt populous *Province* in the World.

The day would fail (that worthy Antiquary adds in his moſt excellent Epiſtle before his Councils, enough to enflame the coldeſt Age with zeal for Religion) The day would fail me, ſaith he, ſhould I ſpeak of *Edwin*, *Ina*, *Offa*, *Ethered*, *Edmund*, *Ethelſtan*, *Canute*, *Edward* the Confeſſor, and many others; ſeeing among all the Illuſtrious *Kings*, who were *Weſt-Saxons*, the *third* is ſcarce found, *qui Eccleſiam Dei, in Aliquibus, non Ornaverit, Auxerit, Ditaverit*, who did not Adorn, Augment and Inrich the Church of God.

In theſe *early* times of *Zeal* and *Piety* among the *Kings* of *England*, the Juriſdiction and *Authority* of the *Church* took root, and began and proceeded to flouriſh; now, no doubt, but Religion ſincerely managed by good and meek *Church-men*, was a great mean to move the Nation towards a better Order in the Civil State, both in Government and Law. Now I ſay (to uſe *Spelman*'s words) when *Os Sacerdotis Oraculum eſſet plebis, Os Epiſcopi, Oraculum Regis & Reipublicæ*, The mouth of the Prieſt was an Oracle to the People, and the mouth of the Biſhop was an Oracle to the King and the Common-

Commonwealth. In the time of *Ethelbert*, the firſt Chriſtian King of the *Saxons*, we find a Convention at *Canterbury* of Biſhops and *Lords*, to ſettle the affairs of *Church* and *State*. In the time of the *Heptarchy* Summons was, *Ad Epiſcopos, Principes*, &c. Decrees were made afterward, *Cum Concilio Epiſcoporum*, thus during the time of the *Saxons*, &c. and until the *Pope* got footing here by the Conqueror, Eccleſiaſtical Authority went on *apace:* Yea 'tis evident, that it went on *ſtep* by *ſtep* with the progreſs of the *Civil*, and was *gradually* own'd, enlarged and eſtabliſh'd in the very *Eſſence* and *degrees*, and together with the Eſtabliſhment of the *Civil* State.

Inſomuch, that *Eccleſiaſtical* Juriſdiction was ſo twiſted and Interwoven, and, as it were, wrapt in the very Bowels of the *Civil*; and the Eccleſiaſtical Law ſo concern'd and *intimately* wrought into the Temporal Law and Government, that 'twas hard to make the ſeparation, or indeed clearly to aſſign the *diſtinction* betwixt them; which hath taken up the care, both of *Lawyers* and *Statutes* to do it effectually and throughly; and perhaps may be in ſome meaſure a Reaſon of many *Prohibitions* againſt Eccleſiaſtical Prohibitions to this day.

Hence alſo it was, that beyond all known time of *Chriſtianity* in *England*, our great Church-men have had no ſmall hand in making all our *Laws*, both Eccleſiaſtical and Civil: and alſo ſate many hundred years together with our *Temporal* Judges in all

places of *publick* Judicature. "*Primi igitur* "*ſedebant in omnibus Regni Comitiis & Tri-* "*bunalibus Epiſcopi: In Regali quidem pa-* "*latio cum Regni magnatibus: in Comitatu* "*unà cum Comite & Juſtitiario Comitatus:* "*in Turno Vicecomitis cum Vicecomite: in* "*Hundredro cum Domino Hundredi.* So that in promoting Juſtice every where the *ſword* might aid the *ſword*, *& nihil inconſulto Sacerdote* (*qui velut ſuburra in Navi fuit*) *ageretur*, Sp. Epiſ. Conc.

Yet we muſt remember, and 'tis carefully minded in our *Statutes* before mentioned, that our *Kings* were the true and acknowledged *fountains* of the beginning and encreaſe of that wealth, and honour, and *power*, which the Church and *Church-men* then enjoy'd; and that the *Kings* of *England* were ever *Supream* over this Church, and all its Miniſters; and not the *Pope*, or any foreign power; the *Pope*'s Collector or Miniſter (ſo ſay our ancient Books) had no Juriſdiction in this Land, *Lord Coke of Courts*, *p.* 321.

In our *Law* before the *Conqueſt*, the *King* was the *Vicar* of the higheſt *King*, ordained to this end, that he ſhould above all govern the *Church*, *Edw. Laws*, *c.* 19. and this hath been carefully maintained by our *Laws* ever ſince. See *Cawdries Caſe*.

SECT.

SECT. I.

Juriſdiction *of the Church in* Common *Law.*

THUS the power and Juriſdiction Eccleſiaſtical grew up with and received much perfection by and in *Common* Law.

By *Common* Law, I mean, *long* and *general uſe* in the whole *Land*; for as I take it, my Lord *Coke* ſaith, That *time* and *uſe* make a *Cuſtom:* when that's *general* in *England*, it's called *Common Law*; that is my meaning; whether my Notion be right, I weigh not, if the *matter* and Argument prove and expreſs the *manner* of the Churches *ancient* Authority and Juriſdiction before the *Statutes.*

'Tis moſt evident, *William* the *Conqueror* found the *Biſhops* and other Eccleſiaſtical Miniſters in great *power* and with large *Juriſdiction*, which they had long enjoy'd, according to the *Law* and Cuſtom of the Realm. Call that *Law* what you will, by that they enjoy'd their ancient Rights and government, and that's enough.

'Tis true indeed, *William* changed the *ancient* Cuſtom we ſpake of, and diſtinguiſh'd the *Tribunals* one from the other: but ſaith *Spelman*, *Secrevit*, *non diminuit Juriſdictionem Cleri*, he did not leſſen the Juriſdiction of the Clergy: Yea, by *ſwearing* he confirm'd the *Laws* of holy *Church*, *Quoniam per eam Rex & Regnum ſolidum ſubſiſtendi*

ſiſtendi habent fundamentum. Proœmium ll. ſuarum, ut Spel. Epiſ. becauſe, by the *Church* both *King* and *Kingdom* have a ſolid foundation of ſubſiſting. Thus the *Churches Rights*, in being before, were *confirm'd* by the Conqueror.

My Lord *Coke* notes *two* excellent *Rules* of *Common Law* to our purpoſe.

1. *The Law doth appoint every thing to be done by thoſe unto whoſe office it properly appertaineth.*

2. 'Tis a Maxim of the *Common Law*, that where the Right is *Spiritual*, and the Remedy thereof only by the *Eccleſiaſtical* Law, the *Connuſance* thereof doth belong to the *Spiritual* Court, *Coke Inſtit. p.* 1.

3. Hence it follows, that there being many Caſes in which there is no remedy any other way provided, by *Common Law* they belong to the Spiritual Courts, and the *Common Law* both *impowers* and *requires* thoſe *Courts* to give *Remedy* in thoſe Caſes.

Vid. Cawdries *Caſe, Anſw. to Object.* 4.

Thus ſtood Eccleſiaſtical Juriſdiction in *England* by *Common Law* before our *Statutes* took ſo much notice of it; and our *Statutes* ſince, whenever they mention it, do generally mention it, as a Government *ſuppoſed*, upon grounds good and firm in *Law* to have *exiſted before*, and alſo *then* to be in uſe, and to flouriſh in its preſent exerciſe, and proceedings in its *proper* courſe and Courts.

'Tis as idle a thing to look in the *Statute*-books for the *beginning* of Eccleſiaſtical Power and its *Courts*, as for the Beginning of

of *Courts-Baron*, which are ſuch by *Common Law*, as *Coke* ſaith, or the Court of *Marſhalſea*, which, as *Coke*'s words are, hath its *foundation* in *Common Law*; or Courts of *Copyholders*, which are ſuch by *Cuſtom:* And for the ſame reaſon to queſtion the lawfulneſs of *theſe* Courts, becauſe, in their *original*, they were not Eſtabliſhed by *Act* of *Parliament*, as well as the legality of the Courts *Spiritual*; *theſe* being equally founded in the *Ancient* uſage, Cuſtom and *Law* of *England*; and all taken care for in *Magna Charta*, that ancient Authentick account of our *Common Law*.

And why are *Eccleſiaſtical* Judges (I mean not *Biſhops* only, whom Mr. *Hickeringill* finds in *Scripture*, but) *Archdeacons*, *Chancellors*, *Officials*, &c. as well Eſtabliſh'd in their proper power, as *Coroners*, *High-Conſtables*, &c. that have the *Origine* of their Offices before *Statutes?* Have not *Eccleſiaſtical* Officers, when lawfully *inveſted*, power, as well as they, to *Act* in their *proper* Juriſdictions, by the ſame *Common Law?* by long, ancient and eſtabliſht Cuſtom; or as the uſual word in our *Statutes* in this very Caſe is, *ſecundum Conſuetudines & Leges Angliæ?*

My Lord *Coke* ſaith, The *Kings* Prerogative is a principal part of the *Common Law*, which alſo flouriſheth in this part of it, the *Eccleſiaſtical* Power and Juriſdiction, as well as in the *Civil* State and Government. Thus we acknowledge, the Eccleſiaſtical State, and External, and *Coercive* Juriſdi-

ction derives from and depends upon the *Crown* of *England* by *Common Law*: And I am bold to add, that the former cannot *eaſily* be Aboliſh'd and deſtroy'd (I do not ſay *altered*) without *threatning* the latter, I mean the *Crown* (at leaſt ſome *prejudice* to it) on which it depends.

Thus *Eccleſiaſtical* Juriſdiction ſtands by *Common Law*, on which alſo moſt of our *Civil* Rights depend; but we confeſs it is *bounded* (as my Lord *Coke*) by the ſame *Common Law*; and in all reaſon it muſt be ſo, it being ſubordinate to the King as *Supream*, who is ſuppoſed to be perſonally or *virtually* preſent in his *great* Courts of *Common Law*; and is ſo declared to be by *Acts* of *Parliament*. *Inſtit. p.* 1. *pag.* 344. of my Lord *Coke*.

SECT. II.

The Government Eccleſiaſtical *is Eſtabliſhed in the* Statutes *of this Realm.*

THE Eccleſiaſtical Juriſdiction being thus found Eſtabliſht by *Law* before the *Statute*-books were made, the *Statutes* do Eſtabliſh it as much as any reaſonable unprejudic'd man can expect or deſire.

We ſhall begin with *Magna Charta*, which is *Statute* as well as *Common Law*, and ſeems to unite and tye them together: This ſtands at the *beginning* of our *Statute*-book; and the firſt thing in this, is a *grant* and

and eſtabliſhment for ever of the *Rights* and Liberties of the Church; that muſt be underſtood of the Rights and Liberties *then* in *being*; and among the reſt, ſure the great Right and Liberty of the Churches *Power*, and the free uſe of her Eccleſiaſtical *Juriſdiction*.

Magna Charta it ſelf expounds what it means by *holy Church*, *i. e.* the *Biſhops* and Miniſters of it, which King *Hen.* 8. in the *Statute* ſaith is commonly called the *Spiritualty*: and Mr. *Hickeringill*, for all his *ſcoffing*, knows that the *Church* of *England* allows a larger ſence of the word [*Church*] *viz.* the *Congregation of all faithful men*, &c. And when we call the *Clergie*, or the *Governing*-part of the *Church*, the *Church*, we uſe it in a *Law*-ſence, and as a term of *Law*, as *Acts* of *Parliament* as well as the *Civil* or *Canon*-Law do: But this by the way.

2. When the ſubſequent *Acts* of *Parliament* do ſo frequently mention the *Spiritual Courts*, and their Juriſdiction; this to me is a *legal allowance* of them; and indeed a Tacit or *implicit* acknowledgment of their more *ancient antecedent* Power and *Common* right and liberty, by the undoubted *Cuſtom*, *i. e.* the *Common* Laws of the Land. Yea thoſe very *Statutes* that look at leaſt obliquely upon them; that ſay they are bounded by the *Common Law*; that do of themſelves *limit* and prohibit the Eccleſiaſtical *Courts* in *ſome* caſes, ſeem plainly to acknowledge them in *other* caſes *not* excepted from their Juriſdiction. But,

3. More plainly and *directly*, thoſe *Acts* of Parliament that appear in the behalf of *Eccleſiaſtical* Juriſdiction in times of its *trial* and danger, and vindicate its Rights, and preſerve and maintain its *Liberties* when moſt in queſtion: there have hapned ſuch occaſions, wherein the *Statutes* have *reſcued* and replevied the *Eccleſiaſtical* Power; in *all* which the *Statutes* have been thus favourable to it; *three* of late, not to mention many formerly.

1. Thus, when ſome might imagine, that by the *alteration* made by King *Hen.* 8. the *Biſhops* and their Power was ſhaken: the *Statutes* made in his time aſſure us, that it was but to *reſtore* the *ancient* Juriſdiction, and not to deſtroy it; that *Biſhops* ſhould be *elected* and *act* as formerly; eſpecially as *Coke* noteth, by the 25 *Hen.* 8. *c.* 20. it is Enacted, That every perſon choſen, *inveſted*, *Conſecrated*, *Archbiſhop* or *Biſhop*, according to this *Act*, ſhall do and *execute* every thing and things as any *Archbiſhop* or *Biſhop* of this Realm, without offending of the *Prerogative* Royal of the *Crown*, and the *Laws* and *Cuſtoms* of the Realm at any time heretofore have done.

Note, that this *Statute*, contrary to the 1 *Edw.* 6. 2. was *revived* by Queen *Eliz.* 1. *cap.* 1. which the *Judges* thought and judged a *full anſwer* to *all* the Objections againſt the Churches proceedings contrary to the 1 *Edw.* 6. 2. and by this very *Statute* 1 *Edw.* 6. 2. ſtands clearly *repealed*, as my Lord *Coke* obſerves *Rep.* 12. 8, 9. which cauſed me

me to make choice of it for my preſent purpoſe.

2. The *ſecond* is obſerved in the time of *Phil.* and *Mar.* when the manner of *Eccleſiaſtical* Juriſdiction had been *altered* by the 1 *Edw.* 6. the *Statute* eſtabliſheth the ſame as it was *before* in theſe words: And the Eccleſiaſtical *Juriſdictions* of the *Archbiſhops*, *Biſhops*, and (other) *Ordinaries*, to be in the *ſame eſtate* for *Proceſſe* of Suits, *puniſhment* of crimes, and execution of *Cenſures* of the Church, and *knowledge* of *cauſes* belonging to the ſame; and as *large* in thoſe points, as the *ſaid Juriſdiction* was the 20 *Hen.* 8. which *Statute* of *Phil.* and *Mar.* *repealed* the 1 *Edw.* 6. 2. and was never repealed ſince, as the *Judges* reſolved in the foreſaid *Caſe* 4 *Jac.* but evidently *revived* by 1 *Eliz.* 1. *Sect.* 13.

3. When *thirdly*, the long *Parl.* 17 *Car.* 1. had diſabled the *Juriſdiction* of the *Courts* Eccleſiaſtical, it was very carefully *reſtored* and *eſtabliſhed* by the *Stat.* 13 *Car.* 2. in theſe words; Neither *this Act* --- ſhall *take away* any *ordinary* Juriſdiction from the ſaid *Archbiſhops*, &c. but that they, and every of them, may proceed --- in all *manner* of Eccleſiaſtical Juriſdiction; and in all *Cenſures* and *Coercions* belonging to the ſame, as *they* did and might lawfully have done *before* the making of the ſaid Act. *Vid.* 17 *Car.* 1.

4. 'Tis ſufficient, yet I cannot but ſubjoyn one notable way more *Argumentative* enough, alone by it ſelf, to prove the Eccleſiaſtical

ſiaſtical *Courts* to be allow'd and confirm'd by *Statute*, *viz.* when the Statutes *direct* ſuch particulars to be tried in theſe *Courts*; and *require* theſe Spiritual Courts to *uſe* their power for the *puniſhment* of offenders, and the doing Juſtice: And I think there cannot be a better *medium* or clearer evidence than we have in this matter.

For if the *Spiritual Courts* have no *power* to try ſuch matters, and paſs Judgment, and puniſh in ſuch caſes, why do the *Statutes direct* and remit ſuch matters to them? and why do the *Statutes enjoyn* them to take *Connuſance* and proceed accordingly? that ſo they do, is plain.

In the 18 of *Edw.* 3. 6. 'tis ſaid, that *Proceſſe* in *Cauſes Teſtamentary* notoriouſly *appertaineth* to holy Church. We muſt not blemiſh the *Franchize* of Holy *Church:* And in the 18 of *Edw.* 3. 6. parties are to be *diſmiſſed* from *Secular* Judges in Cauſe of Tithes, and left to the Church: Ordinaries have power to puniſh Miniſters and Prieſts; as in 1 *Hen.* 7. *c.* 4.

Synodals, *Proxies*, *Penſions*, &c. are to be recovered in the Spiritual *Courts*. *Vid.* 15 *Hen.* 8. *c.* 7. *Sect.* 7.

The like is known touching Cauſes *Matrimonial* and *Defamations*, &c. I ſhall only inſtance one more, *viz.* in the great *Cauſe* of *Non-Conformity*; and that in an *Act* that is *nearer* to us, and of unqueſtionable Authority, which both *directs* what we ſhould puniſh, and moſt *ſolemnly requires* by *its own Authority* to exerciſe our Eccleſiaſtical Power,

er, by the very *rules* and proper methods of our Spiritual *Courts*; in theſe words, 1 *Eliz.* before the Common Prayer: *Provided always, and be it Ordained and Enacted by the Authority aforeſaid, That all and ſingular* Archbiſhops *and* Biſhops, *and every of their* Chancellors, Commiſſaries, Archdeacons, *and other* Ordinaries, *having any peculiar Eccleſiaſtical Juriſdiction, ſhall have* full power *and Authority by* vertue of this Act, *as well to* enquire *in their* Viſitations, Synods, *and elſewhere, within their* Juriſdiction, *at* any *other time or place, to take* accuſation *and informations of all and every the things above mentioned, done, committed or perpetrated within the* limits *of their Juriſdictions and Authority, as to* puniſh *the ſame, by Admonition, Excommunication, Sequeſtration, or Deprivation, and other* Cenſures *and Proceſſe, in like form as* heretofore *hath been uſed in like caſes, by the* Queens Eccleſiaſtical Laws. This doubtleſs is very plain.

And hereupon, 'tis ſolemnly *required* in theſe words a little before: *For the due execution hereof, they do in* Gods name *earneſtly* require *and charge all* Archbiſhops, Biſhops, *and other* Ordinaries, *that they ſhall endeavour themſelves to the utmoſt of their knowledges, that the due and true execution hereof may be had, throughout their Dioceſes and* Charges, *as they will anſwer* before God *for ſuch evils and plagues, whereby Almighty God may juſtly* puniſh *his people for neglecting this good and wholſom Law.*

Now

Now if in like caſes it had not been *lawful* before this *Act*, for the *Spiritual Courts* ſo to proceed, why are the former *Laws* and uſe to be followed by theſe *directions?* Or if this *Act* cannot *impower* us, give us *reaſon* or *Law* againſt it. Or if any thing be a greater grievance to you in the *Spiritual Courts*, than the *puniſhment* provided for the crimes mentioned in this *Act*, ſay what it is, or ſay nothing.

But if theſe caſes be not ſufficient, Mr. *Cary* can tell you of at leaſt *ten* particular matters, upon which the *Law* is, to *grant* the *Writ de Excommunicato capiendo:* and according to a known *Act* of *Parliament* made after this, *viz.* 5 *Eliz.* 23. which ſufficiently allows and confirms our Eccleſiaſtical proceedings to the ſences of too many, as ſome complain.

CHAP. VII.

Of Canons and Convocations.

WE ſee what *Reaſon* Mr. *Hickeringill* had to keep ſuch a *pother* about the *force* of Eccleſiaſtical *Canons*, and the Authority of *Convocations.* Eſpecially,

1. Seeing the late mentioned Act of 1 *Eliz.* ſuppoſeth the *Eccleſiaſtical* Laws, *i. e.* the *Canons* to be *her own Laws*; and *requires*

quires Eccleſiaſtical *Judges* ſo ſeverely to put them in *execution.*

2. Seeing, ſince the *Reformation*, moſt of the matters of *Canons* are *expreſſed* and enjoyned in *Acts* of *Parliament*; inſomuch, that *Eccleſiaſtical* Juriſdiction might ſtand and proceed well enough, had we no other *Canon* but *Acts* of *Parliament*, as Mr. *Hickeringill* inſinuates: and 'tis worthy his obſervation, that the greateſt *complaints* of Diſſenters, ſince the *Kings* happy *return*, have been upon the *execution* of *Acts* of *Parliament*, and that not ſo much by *Eccleſiaſtical* as *Civil* Miniſters.

Indeed the *Statute* of *Car.* 2. that *reſtored* the *Eccleſiaſtical* Juriſdiction, hath a *Proviſo*, That by vertue of *that Act*, the *Canons* of 1640. ſhall not be of force; and that *no Canons* are made of force by *that Act* that were not formerly confirm'd by *Acts* of *Parliament*, or by the eſtabliſh'd *Laws* of the Land, as they ſtood in *Ann.* 1639.

But 'tis evident enough, that by *the* 25 *Hen.* 8. *c.* 19. the old *Canons*, not againſt Law or *Prerogative*, are of *force*; and that the *King* with the *Convocation*, may make *new ones*, with the ſame *Conditions*; and indeed, while the *Convocation* is ſo limited by that *Act*, their power ſeems not very *formidable.*

My Lord *Coke*, who was not a *Bigot* for *Spiritual* Power, declares the *Law* in both thoſe Caſes; and tells us, That it was reſolved by the Judges at a Committee of Lords, theſe reſtraints of the *Convocation* were grounded on that *Statute.* 1. They

1. They cannot *Aſſemble* without the *aſſent* of the King.

2. They cannot *Conſtitute* any *Canons* without his *licence.*

3. Nor *execute* them without his *Royal aſſent.*

4. Nor after his *aſſent*, but with theſe four *limitations.*

1. That they be not againſt the Kings *Prerogative.*

2. Nor againſt *Common* Law.

3. Nor againſt *Statute* Law.

4. Nor againſt any *Cuſtom* of the Kingdom, *Rep.* 12. *p.* 720. And my Lord *Coke* adds, That theſe *reſtraints* put upon the *Convocation* by the 25 *Hen.* 8. are but an *affirmance* of what was before the *Statute*; and, as he ſaith (in his book of *Courts*) are
Pag. 323. but *declaratory* of the old *Common Law:* conſequently the *Courts* of *Common* Law are to *bound* and over-rule all *Eccleſiaſtical* executions of *Canons*, and ſecure the *Crown* and the *Laws* againſt them.

But what *Acts* of *Parliament* have abrogated the Authority of the *Synod* 1603. and quite *annihilated* the very *beings* of *Convocations*, I am yet to learn; though Mr. *Hickeringill* ſo *boldly* after his own way vents ſo wild a notion *p.* 3. & 12. or when that of 25 *Hen.* 8. 19. was *repealed*, or how they are made leſs *than nothing at this day*, than they were before, ſince that *Statute* of *limitations*, as he is pleaſed to inſult?

He ſaith, They are far from being the *Repreſentative* Church of *England*; for that the

the *people* have not the leaſt Vote in their *Election.* Pray, when was it otherwiſe than 'tis now? If the *Law* by *Inſtitution* make the *Clerk* a guide to his *flock* in *Spirituals*; if the *people* do expreſly make choice of him for ſuch, or virtually conſent in Law he ſhould be ſo; and thereupon the *Law* allows this *Clerk* to *elect* members for the *Convocation*, and alſo reckons the *Convocation* to be the *Repreſentative* Church of *England*; how comes it that Mr. *Hickeringill* who is ſo great a ſtickler for a *Legal Religion* ſhould be ſo much *wiſer* than the *Law?* and to *ſcoff* at its *Conſtitutions?*

I wiſh Mr. *Hickeringill* to beware of touching *Foundations* with his rude and *bold Fancies*, and diſturbing the *frame* of Government. I am ſure he will not abide by his *own Rule*, if he be well adviſed of the *manner* of Electing the great *Repreſentative* of the people of *England*: 'tis our duty to *ſtudy to be quiet*, but ſome ſtudy to be *otherwiſe*. The wiſeſt word in his *Naked Truth* is this; *If men once come to* diſpute Authority, *and the wiſdom of the* Laws *and* Law-makers, *the next ſtep is* Confuſion *and* Rebellion, *p.* 11.

The

The Concluſion.

THUS you have a Taſte of the *Spirit* and Sence that runs through the Book called *Naked Truth*; his other little groſs *miſtakes* are not worthy obſerving, much leſs inſiſting on: ſuch as theſe:

1. Firſt, That all *Archdeaconries* have *Corpſes* annex'd, which is certainly *otherwiſe*, in *moſt* Archdeaconries in ſome *Dioceſes*.

2. Then that *Archdeacons* require *Procurations* when they do not *Viſit*; which is not done in *ſome*, and I hope in no *Dioceſe*.

3. Laſtly, That *Procurations* and *Synodals* are againſt *Law*, and not to be *recovered* by *Law* or Conſcience; when he himſelf confeſſeth that they are due by ancient *Compoſition:* That *proviſion* (notwithſtanding his old *Canons*) in *Viſitations* is due; for which the *money*, paid for *Procurations*, is paid for them by vertue of that *Compoſition:* and whereas, they are due by undoubted and long *poſſeſſion* and Cuſtom, which is as *Law* in *England:* And to conclude, are not only *expreſly* allow'd as due, but declared to be *recoverable* in the Eccleſiaſtical *Courts*, by the *Statute* of 34 *Hen.* 8. 19.

I have, at *this time*, done with his *Materials*; and for the *Manner* of his Writing, let the *Sentence* of every *Reader reproach* and ſhame him. I like not the office of *Raking Kennels* or emptying *Jakes*; and all the harm I return him, is to *pray* heartily for him, That God would give him Grace ſoberly to read over his own Books, and with *tears* to waſh theſe *dirty* ſheets, wherein he hath plai'd the wanton; and indeed defiled *himſelf* more than his own *Neſt* (whatever the unlucky *Bird* intended) and that with ſuch a *barbarous* wit, and vile Railery, as is juſtly offenſive to *God* and *Man*: with ſuch wild *triumphs* of *ſcorn* and contempt of his own *Order* and *Office*, his *Betters* and *Superiors*; with ſuch a profligate neglect of *Government* and Peace; and of his own *Conſcience* and *Law* (againſt which, he confeſſeth, he ſtill acts) yea, againſt his own *Intereſt*, *Safety*, and his very *Reputation*.

For all which Notorious and publick Miſcarriages, I wiſh he thought it fit to do publick *Penance* in another *new* and *cleaner Sheet*.

I have to do with *two* Adverſaries, Mr. *Hickeringill* and Mr. *Cary*: the *firſt* wiſheth the *Church* of *England* had *more* power than it now hath; the *other*, that it had *leſs*. I preſume in the *name* of the true *Sons* of this *Church*, that we are very thankful for the *power* we have, by the favour of our gracious *King* and his good *Laws*.

And as we do, and always ſhall *acknowledge* the *Dependance* of our Eccleſiaſtical

Juriſdiction upon the Imperial *Crown* of this Realm: So whether it ſeem good to the *King* and his High Court of *Parliament*, to augment or *leſſen* it, or to *continue* it as it is, we ſhall ſtill maintain our Loyalty, and manifeſt our duty, and chearfully ſubmit our ſelves. But, Lord, *forgive our Enemies, Perſecutors and Slanderers, and turn their hearts.*

THE

THE POSTSCRIPT.

I Have reſerved a few *Authorities* for the ſatisfaction of ſuch as have no *mind* or *leiſure* to read the Book; which *alone* are ſufficient to oppoſe and *expoſe* my *Adverſaries* Objections.

I.

Epiſcopal Government in the Church of *England* is as Ancient as the *Church*; and at *firſt* was ſubordinate, under *God*, *only* to our *Kings*, without any relation to or *dependance* on the *Pope*; and *declared* to be ſo, with the *grounds* and reaſons thereof, very early by *Edw.* 1. and *Edw.* 3. and ſo *Eſtabliſhed* by *Acts* of *Parliament*.

Read 25 Edw. 3. *the* ſumm *is thus.*

Here we have a *Recital* of the *firſt* Statute againſt *Proviſors*, to this effect; Whereas

the Holy Church of *England* was founded in the Eſtate of *Prelacy* by the *Grandfather* of this King and his *Progenitors*, &c. and by them *endowed* with great *Poſſeſſions*, &c. for them to inform the People in the Law of *God*; to keep Hoſpitality, *&c.* And whereas the *King* and other *founders* of the ſaid *Prelacies* were the Rightful *Adowers* thereof; and upon *Avoidance* of ſuch Eccleſiaſtical Promotions, had power to advance thereunto their *Kinſmen*, Friends, and other Learned men of the *birth* of this *Realm*; which being ſo advanced, became able and worthy to ſerve the *King* in *Council*, and other places in the Commonwealth: The *Biſhop* of *Rome* Uſurping the *Seigniory* of ſuch Poſſeſſions and *Benefices*, did give the ſame to *Aliens*, --- as if he were Rightful *Patron* of thoſe Benefices; whereas, by the *Law of England*, he never had the Right *Patronage* thereof: whereby in ſhort time all the Spiritual *Promotions* in this Realm would be ingroſſed into the hands of *ſtrangers*, Canonical Elections of *Prelates* would be aboliſhed, works of Charity would ceaſe, the *Founders* and true *Patrons* would be diſinherited, the *Kings Council* weakned, and the whole Kingdom impoveriſhed, and the *Laws* and *Rights* of the Realm deſtroyed.

Upon this complaint it was reſolved in *Parliament*, That theſe *Oppreſſions* and grievances ſhould not be ſuffered in any manner; and therefore it was Enacted, That

That the *King* and his Subjects ſhould thenceforth enjoy their Rights of *Patronage:* that free Elections of *Archbiſhops* and *Biſhops*, and other Prelates Elective ſhould be made according to the Ancient *Grants* of the *Kings Progenitors* and their *Founders*; and that *No Proviſion* from *Rome* ſhould be put in Execution; but that thoſe *Proviſors* ſhould be Attached, Fined and Ranſom'd at the *Kings Will*; and withal impriſoned, till they have *renounced* the benefit of their *Bulls*, ſatisfied the *Party* grieved, and given *ſureties* not to commit the like offence again.

II.

Before this forementioned Act *was made, the* Spiritual Courts *were in* Being, *and had* Power *by the* Law *of the Land, to try ſuch* Cauſes *as were not to be tried by* Common Law: *ſo declared and Eſtabliſh'd by Acts of* Parliament. Vid. *in the time of* Edw. 1. *and* Edw. 2. *near four Hundred years ſince.*

Circumſpectè agatis, 13 Edw. 1. *An.* 1285.

The *King* to his *Judges* ſendeth greeting: Uſe your ſelves *circumſpectly*, in all matters concerning the *Biſhop* of *Norwich* and his Clergy; not puniſhing them if they hold *Plea* in things as be *meer Spiritual*, as *Penance* enjoyned by *Prelates*, Corporal

or Pecuniary -- for *Fornication*, *Adultery*, or ſuch like: for *Tithes* and *Oblations* due and accuſtomed; *Reparations* of the *Church* and *Church-yard*; *Mortuaries*, *Penſions*, *laying* violent hands upon a *Clerk*, Cauſes of *Defamation*, *Perjury*.: All ſuch demands are to be made in the *Spiritual* Courts; and the *Spiritual* Judge ſhall have *power* to take knowledge of them notwithſtanding the *Kings Prohibition*.

III.

Hereupon a Conſultation *was to be granted* 24 Edw. 1. *as followeth.*

Whereas *Eccleſiaſtical* Judges have often ſurceaſed to proceed by force of the Kings Writ of *Prohibition* in Caſes, whereas Remedy could not be had in the *Kings Courts* -- our Lord the *King* Willeth and Commandeth, That where *Eccleſiaſtical* Judges do ſurceaſe in the aforeſaid Caſes, by the Kings *Prohibition*, that the *Chancellor* or the Chief Juſtice, upon ſight of the *Libel*, at the inſtance of the Plaintiff (if they can ſee that the *Caſe* cannot be redreſſed by *Writ* out of *Chancery*, but that the *Spiritual* Court ought to determine the Matters) ſhall write to the *Eccleſiaſtical* Judge, that he proceed therein, notwithſtanding the *Kings Prohibition*.

More particularly, Thoſe Caſes reſerved by *Law* and *Statute*, againſt which no Prohibition

hibition can be legally granted, are enumerated in *Articul. Cleri*, 9 Edw. 2.

IV.

Thus the proceedings of the *Spiritual* Courts, and the *Cauſes* belonging to them were *ſuppoſed*, *directed*, *allowed*, and *Eſtabliſh'd* by theſe *Ancient Statutes*.

And leſt thoſe *Cauſes* have not been ſufficiently *ſpecified*, no *Prohibition* ſhall be awarded out of *Chancery*, but in *Caſe* where we have the connuſance, and of Right ought to have; as it is in the 18 of *Edw.* 3. provided.

Whence 'tis a *general* Rule, both in *Law* and *Statute*, That *ſuch* caſes as have no remedy provided in the other *Law*, belong to the *Spiritual* Courts: and indeed, it hence appears they have *ever* done ſo; becauſe we no where find in our Laws, that the *Common Law* did ever provide for them: and becauſe the *Kingdom* of *England* is an *intire Empire*, where the *King* is furniſh'd with a *Temporalty* and *Spiritualty*, ſufficient to adminiſter Juſtice to *all* perſons, and in *all* Cauſes whatſoever: And conſequently, what Cauſes are not in the connuſance of the *Common* Law, belong to the *Spiritual* Juriſdiction, which is plainly implied in 24 *Hen.* 8. *c.* 12. and other Statutes.

Upon the *ſame* ground in *Law* depend *three* great truths. 1. The *Antiquity* of *Eccleſiaſtical* Courts. 2. Their *dependance* upon the *Crown*. 3. The *perfection* of the Government, to adminiſter Juſtice in all caſes to all perſons, from the *Supream* Power exerciſed in the *Temporal* and *Spiritual* Courts; all which lie in the Preamble of that *Statute* according to our *Ancient Laws*.

For, ſaith my Lord *Coke* in the concluſion of *Cawdries Caſe*, it hath appeared, as well by the *ancient* Common Laws of this Realm, by the *Reſolution* of the *Judges* and Sages of the *Laws* of *England* in *all* ſucceſſion of *Ages*, as by Authority of many *Acts* of Parliament, *ancient* and of *latter* times, That the *Kingdom* of *England* is an abſolute *Monarchy*, and that the *King* is the only *Supream* Governour, as well over *Eccleſiaſtical* perſons, and in Eccleſiaſtical *Cauſes*, as *Temporal*: To the due obſervation of which *Laws*, both the *King* and the *Subject* are *ſworn*.

V.

IF you deſire a more full and *particular* account of ſuch *Caſes*, as being not provided for at *Common Law*, *are* therefore, and *have been* ever under the *Spiritual* power, take this excellent *Enumeration* of my Lord *Coke*.

Cawdries Caſe.

Obſerve

Obſerve (good Reader) ſeeing that the determination of *Hereſies*, *Schiſms*, and *Errors* in Religion, *Ordering*, *Examination*, *Admiſſion*, *Inſtitution* and *Deprivation* of men of the Church (which do concern God's true Religion and Service) of right of *Matrimony*, *Divorces*, and general *Baſtardy*, (whereupon depend the ſtrength of mens *Deſcents* and *Inheritances*) of Probate of *Teſtaments*, and Letters of *Adminiſtration* (without which no debt or duty due to any *dead* man can be recovered by the *Common* Law) *Mortuaries*, *Penſions*, *Procurations*, *Reparations* of Churches, *Simony*, *Inceſt*, *Adultery*, *Fornication* and *Incontinency*, and ſome others, doth not belong to the *Common Law*, how *neceſſary* it was for adminiſtration of Juſtice, that his *Majeſtie's Progenitors*, Kings of this Realm, did by *publick Authority* authorize *Eccleſiaſtical Courts* under them, to determine thoſe great and *important* Cauſes Eccleſiaſtical (*exempted* from the Juriſdiction of the *Common Law*) by the Kings Laws *Eccleſiaſtical*, which was done *originally* for *two* cauſes. 1. That Juſtice ſhould be adminiſtred *under* the *Kings* of this Realm, within their *own* Kingdom, to all their *Subjects*, and in *all* cauſes. 2. That the *Kings* of *England* ſhould be furniſhed upon all occaſions, either foreign or domeſtical, with Learned *Profeſſors*, as well of the *Eccleſiaſtical*, as Temporal Laws.

VI. Eccle-

VI.

Eccleſiaſtical *Laws are the* Kings *Laws, though* Proceſſe *be not in the* Kings Name.

Coke, Cawdr. Caſe, latter end.

Now, albeit the proceedings and *Proceſſe* of the Eccleſiaſtical Courts be in the Name of the *Biſhops*, &c. it followeth not therefore, that either the *Court* is not the *Kings*, or the *Law*, whereby they proceed, is not the *King*'s Law. For taking one example for many, every *Leet* or *View* of *Frankpledge* holden by a *Subject* is kept in the *Lords Name*, and yet it is the *Kings Court*, and all the proceedings therein are directed by the *Kings Laws*.

VII.

Spiritual Cauſes ſecured from Prohibitions, *notwithſtanding*, by Acts *of* Parliament *Lord* Coke, Cawdries *Caſe in* Edw. 2.

N. B. Albeit, by the Ordinance of *Circumſpecte agatis* made in the 13 year of *Edw.* 1. and by *generall allowance* and uſage, the *Eccleſiaſtical Court* held Plea of *Tithes*, *Obventions*, *Oblations*, *Mortuaries*, *Redemptions* of *Penance*, laying of violent hands upon a *Clerk*, *Defamations*, &c. yet did not the *Clergie* think

think themſelves aſſured, nor quiet from *Prohibitions* purchaſed by Subjects, until that *King Edw.* the Second by his *Letters Patents*, under the Great Seal, in, and by conſent of *Parliament*, upon the *Petitions* of the *Clergie*, had *granted* unto them to have *Juriſdiction* in thoſe *Caſes*. The *King* in a *Parliament* holden in the Ninth year of his Reign, after *particular* Anſwers made to their Petitions concerning the matters aboveſaid, doth *grant* and give his *Royal aſſent* in theſe words.

We deſiring, as much of right *as we may, to provide for the ſtate of the* Church *of* England, *and the tranquillity and quiet of the* Prelates *of the ſaid Clergie, to the honour of God, and the amendment of the ſtate of the ſaid Church, and of the* Prelates *and Clergie; ratifying and approving all and ſingular the ſaid* Anſwers *which appear in the ſaid* Act; *and all and ſingular things in the ſaid Anſwers contained, We do for Us and Our Heirs* grant, *and* command, *that the ſaid be inviolably kept for* ever; *willing and granting for Us and Our Heirs, that the ſaid* Prelates *and Clergie, and their Succeſſors for ever, do exerciſe* Eccleſiaſtical Juriſdiction *in the* Premiſes, *according to the tenour of the ſaid Anſwer.*

VIII.

The *Eccleſiaſtical Juriſdiction* is a *branch* of the Kings *Supremacy*; and he that deni-

eth

Cawdries Caſe.

eth it, denieth the *King to be a compleat Monarch*, and *Head of the whole intire body of the Realm*, as my Lord *Coke* aſſures us, both from the *Common Law* and many *Statutes* in *all Ages* --- made *on purpoſe*, from time to time, to *vindicate* the *Crown* and *ſecure* our own *Church* and its *Juriſdiction* under the *Crown* from the *Pope*, and his illegal Encroachments and *Uſurpations* before, and more eſpecially by *Hen.*8. and ſince the *Reformation*; as is very amply proved by my Lord *Coke*, in his moſt *excellent* diſcourſe on *Cawdrie*'s *Caſe*, and ſince very learnedly and fully by Sir *John Davis*, Atturny General in *Ireland*, in his *Caſe* of *Præmunire*, called *Lalor*'s Caſe; both which ſhould be well read by all that deſire ſatisfaction in this *weighty* point.

Thus the *Juriſdiction* of this Church, in ſubordination to the *Supream Head* of it, hath proceeded through all time, in the *Laws* and *Statutes* of our own Kingdom; and was never *legally interrupted*, till the 17 of *Car.* 1. but that *Act repeal'd* by the 13 of our preſent *gracious King*, it ſtands *firm* again, according to the letter of the ſaid *laſt Act*, upon its *ancient legal Baſis*.

IX.

The old Objection, *that the* Spiritual *Courts do not Act in the* Kings Name, *&c. is fully Anſwered in the* Book; *but, becauſe it is only mentioned there, that the*

the Caſe *was reſolved by the* Judges *in* King James's *time: I ſhall here ſet it down, as* abridg'd (*for brevity*) *out of my Lord* Coke *by* Manly. 1. Coke, Rep. 12. p. 7.

Paſch. 4 Jac. Regis.

At this *Parliament*, it was ſtrongly urg'd at a grand *Committee* of the *Lords* and *Commons* in the *Painted Chamber*; that ſuch *Biſhops* as were made after the firſt day of the *Seſſion*, were not *lawful* Biſhops.

1. Admitting them *Biſhops*, yet the *Manner* and Form of their *Seals*, *Stiles*, *Proceſſe* and proceedings in their *Eccleſiaſtical* Courts, were not conſonant to *Law*; becauſe, by the *Stat.* 1 *Edw.* 6. 2. it is provided, that thenceforth *Biſhops* ſhould not be *Elective*, but *Donative*, by Letters Patents of the *King*; and for that, at this day, all *Biſhops* were made by *Election*, not Donation of the *King*; therefore the ſaid *Biſhops* are not lawful.

2. By the ſame *Act* it is provided, that all *Summons*, &c. and Proceſſe in Eccleſiaſtical Courts ſhall be made in the *Kings Name* and *Stile*, and their Seals engraven with the *Kings Arms*, and Certificates made in the *Kings Name*: it was therefore concluded, that the ſaid *Statute* being ſtill in force, by conſequence all the *Biſhops* made after the Act of 1 *Jac.* were not *lawful* Biſhops; and the *proceedings* being in the *Name*

Name of the *Biſhop*, makes them unlawful, *quia non obſervata forma infertur adnullatio Actus.*

Upon conſideration of theſe *Objections*, by the *Kings* Commandment, it was Reſolved by *Popham* Chief Juſtice of *England*, and *Coke* Atturny of the King, and after affirmed by the *Chief Baron*, and the other *Juſtices* attendant to the *Parliament*, that the ſaid *Act* of 1 *Edw.* 6. 2. is *not now in force*; being *Repealed*, Annulled and Annihilated by *three* ſeveral *Acts* of *Parliament*; any whereof being in force, it makes that *Act* of 1 *Edw.* 6. that it cannot ſtand, *quia Leges poſteriores priores contrarias abrogant*: And by the *Act* of the 25 *Hen.* 8. *c.* 20. is ſet forth the *manner* of *Election* and Conſecration of *Archbiſhops* and *Biſhops*; and alſo for the making and *Execution* of all things which belong to their *Authority*: with which words the *Stile* and *Seal* of their Courts, and the *manner* of their proceedings are *included*: which *Act* of 25 *Hen.* 8. is *Revived* by 1 *Eliz. c.* 1. and conſequently, that of 1 *Edw.* 6. *c.* 2. is *Repealed.*

I adviſe the *Reader* to ſee it, as more at large, expreſſed; and the repealing Statutes particularly mentioned, and argued in my Lord *Coke*, 12 *Rep. p.* 7, 8, 9. and bid him farewel, and not be wiſer than the *Law.*

FINIS.